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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2412

Privacy

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This final rule adopts, with one change, the proposed rule published in the **Federal Register** on October 11, 2023. The rule updates procedures under the Privacy Act for requesting information from the Federal Labor Relations Authority (FLRA) and procedures that the FLRA follows in responding to requests from the public, in order to reflect changes in the law and the FLRA's organization since the regulations were last updated.

DATES: This final rule is effective January 3, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas Tso, Solicitor, Senior Agency Official for Privacy, at (771) 444–5779.

SUPPLEMENTARY INFORMATION: On October 11, 2023, the FLRA published a proposed rule in the **Federal Register** at 88 FR 70374, amending its regulations under the Privacy Act to update procedures for requesting information from the FLRA and procedures that the FLRA follows in responding to requests from the public, in order to reflect changes in the law and the FLRA's organization since the regulations were last updated. These revised regulations account for issues that have arisen since the regulations were last updated. The FLRA solicited written comments; and requested that any such comments be submitted by November 13, 2023.

The FLRA received one comment on the proposed rule from the American Association of Nurse Practitioners, which suggested changing ''physician'' to ''licensed health care professional'' in § 2412.6(d). The FLRA agrees with this change as a requester's provider of choice may not be a physician, but another licensed health care professional, such as a nurse practitioner. Other agencies have also utilized the broader term in similar situations. *See, e.g.,* 5 CFR 1830.4, 45 CFR 164.502(g)(3)(ii)(C). Based on the rationale set forth in the proposed rule and this document, the FLRA is thus adopting the proposed rule as the final rule with this one change.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities. The Privacy Act primarily affects individuals and not entities and the final rule would impose no duties or obligations on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2412

Privacy Act.

■ For the reasons stated in the preamble, the FLRA revises 5 CFR part 2412 to read as follows:

PART 2412—PRIVACY

Sec.

Authority: 5 U.S.C. 552a.

§ 2412.1 Purpose and scope.

This part contains the regulations that the Federal Labor Relations Authority (FLRA), including the Authority component (Authority), the General Counsel of the FLRA (General Counsel), the Inspector General (IG), and the Federal Service Impasses Panel (Panel), follow under the Privacy Act of 1974, as amended, 5 U.S.C. 552a. These regulations should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The regulations apply to all records maintained by the Authority, the General Counsel, the IG, and the Panel that are contained in a system of records, as defined at § 2412.2(d), and that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records. In addition, the regulations limit the access of other persons to those records. The Authority, the General Counsel, the IG, and the Panel also process all Privacy Act requests for access to records under the Freedom of Information Act, 5 U.S.C.

552, giving requesters the benefit of both statutes. These regulations do not relate to those personnel records of Federal Government employees, which are under the Office of Personnel Management's (OPM) jurisdiction, to the extent such records are subject to OPM regulations.

§ 2412.2 Definitions.

For the purposes of this part—

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, or disseminate.

Record means any item, collection, or grouping of information about an individual that is maintained by the Authority, the General Counsel, the IG, or the Panel including, but not limited to, information regarding the individual's education, financial transactions, medical history, and criminal or employment history, that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Request for access to a record means a request made under the Privacy Act, 5 U.S.C. 552a(d)(1).

Request for amendment or correction of a record means a request made under the Privacy Act, 5 U.S.C. 552a(d)(2).

Request for an accounting means a request made under the Privacy Act, 5 U.S.C. 552a(c)(3).

Requester means an individual who makes an existence-of-records request, a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

Routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

System of records means a group of any records under the control of the Authority, the General Counsel, the IG, or the Panel from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.

§ 2412.3 Notice and publication.

The Authority, the General Counsel, the IG, and the Panel will publish in the **Federal Register** such notices describing systems of records as are required by law.

§ 2412.4 Existence-of-records requests.

(a) If you want to know whether a system of records maintained by the Authority, the General Counsel, the IG, or the Panel contains a record pertaining to you, you may submit a written existence-of-records request by mail to the FLRA's Solicitor or IG, as appropriate, at the Authority's offices in Washington, DC, or by email to *privacy@flra.gov*.

(b) You should clearly and prominently identify your request as a Privacy Act request. If you submit the request by mail, it should bear the mark ''Privacy Act Request'' on the envelope or other cover, as well as your return address. If you submit the request by email, the subject line of the email should include the phrase ''Privacy Act Request.'' If you do not comply with the provisions of this paragraph, your request will not be deemed received until the time it is actually received by the FLRA's Solicitor or IG.

(c) An existence-of-records request must include your name and address and must reasonably describe the system of records in question. Whenever possible, the request should also describe the time periods in which you believe the records were compiled and the name or identifying number of each system of records in which you believe the records are kept. The Authority, the General Counsel, the IG, and the Panel have published descriptions of the systems of records they maintain in the **Federal Register**.

(d) When you make an existence-of-records request regarding records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) When making an existence-of-records request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, following the requirements of paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(f) The Solicitor or IG, as appropriate, will advise you in writing within ten (10) working days from receipt of your request whether the system of records you identified contains a record pertaining to you or to the individual for whom you are a parent or guardian and, if so, the office in which that record is located. If the Solicitor or IG is prohibited from, or there is otherwise an exemption that prevents, disclosing whether a system of records contains a record pertaining to you or to the individual for whom you are a parent or guardian, you will be notified in writing of the reasons of that determination, and of your right to appeal that determination under the provisions § 2412.12.

§ 2412.5 Individual access requests.

(a) You may make a request for access to a record about yourself that is contained in a system of records maintained by the Authority, the General Counsel, the IG, or the Panel by submitting a written request reasonably identifying the records sought to be inspected or copied by mail to the FLRA's Solicitor or the IG at the Authority's offices in Washington, DC, or by email to *privacy@flra.gov*. You must describe the records that you want in enough detail to enable Authority, General Counsel, IG, or Panel personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the time periods in which you believe the records were compiled and the name or identifying number of each system of records in which you believe the records are kept. The Authority, the General Counsel, the IG, and the Panel have published descriptions of the systems of records they maintain in the **Federal Register**.

(b) Your written request should be clearly and prominently identified as a Privacy Act request. If you submit the request by mail, it should bear the mark ''Privacy Act Request'' on the envelope or other cover, as well as your return address. If you submit the request by email, the subject line of the email should include the phrase ''Privacy Act Request.'' If your request does not comply with the provisions of this paragraph, it will not be deemed received until the time it is actually received by the FLRA's Solicitor or IG.

(c) If you desire, you may be accompanied by another person during your review of the records. If you desire

to be accompanied by another person during the inspection, you must notify the Solicitor or IG at least twenty-four hours in advance of the agreed-upon inspection date. Additionally, you must sign a statement and provide it to the representative of the Authority, the General Counsel, the IG, or the Panel, as appropriate, at the time of the inspection, authorizing that person to accompany you. The agency may require a written statement from you authorizing discussion of your record in the accompanying person's presence.

(d) When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, following the requirements of paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

§ 2412.6 Records about other individuals, medical records, and limitations on disclosures.

(a) Requests for records about an individual made by person other than that individual shall also be directed to the FLRA's Solicitor or IG, as appropriate, at the Authority's offices in Washington, DC, or by email to *privacy@flra.gov.* You must describe the records that you want in enough detail to enable Authority, General Counsel, IG, or Panel personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the time periods in which you believe the records were compiled and the name or identifying number of each system of records in which you believe the records are kept. The Authority, the General Counsel, the IG, and the Panel have published descriptions of the systems of records they maintain in the **Federal Register**.

(b) Such records shall only be made available to persons other than that individual in the following circumstances:

(1) To any person with the prior written consent of the individual about whom the records are maintained;

(2) To officers and employees of the Authority, the General Counsel, the IG, and the Panel who have a need for the records in the performance of their official duties;

(3) For a routine use compatible with the purpose for which it was collected, as defined in 5 U.S.C. 552a(a)(7) and as described under 5 U.S.C. 552a(e)(4)(D);

(4) To any person to whom disclosure is required by the Freedom of Information Act, as amended, 5 U.S.C. 552;

(5) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 of the United States Code;

(6) In a form not individually identifiable to a recipient who has provided the Solicitor or IG with advance adequate written assurance that the record will be used solely as a statistical research or reporting record;

(7) To the National Archives and Records Administration or other appropriate entity as a record which has sufficient historical or other value warranting its preservation, or for evaluation by the Archivist of the United States or the designee of such official to determine whether the record has such value;

(8) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States for a civil or criminal law enforcement activity that is authorized by law if the head of the agency or instrumentality has made a written request for the record to the Solicitor or IG, in accordance with part 2417 of this chapter, specifying the particular portion desired and the law enforcement activity for which the record is sought;

(9) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, provided that notification of such a disclosure shall be immediately mailed to the last known address of the individual;

(10) To either House of Congress or to any committee thereof with appropriate jurisdiction;

(11) To the Comptroller General, or any of Comptroller General's authorized representatives, in the performance of the official duties of the General Accountability Office;

(12) Pursuant to the order of a court of competent jurisdiction; or

(13) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(c) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request and, if submitted by mail or otherwise submitted in an envelope or other cover, should bear the mark ''Privacy Act Request'' on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the Solicitor or the IG.

(d) If medical records are requested for inspection which, in the opinion of the Solicitor or the IG, as appropriate, may be harmful to the requester if personally inspected by such person, such records will be furnished only to a licensed health care professional designated to receive such records by the requester. Prior to such disclosure, the requester must furnish a signed written authorization to make such disclosure and the licensed health care professional must furnish a written request for the licensed health care professional's receipt of such records to the Solicitor or the IG, as appropriate.

(1) If such authorization is not executed within the presence of an Authority, General Counsel, or Panel representative, the authorization must be accompanied by a notarized statement verifying the identification of the requester.

(2) [Reserved]

§ 2412.7 Initial decision on access requests.

(a) Within ten (10) working days of the receipt of a request pursuant to § 2412.5, the FLRA's Solicitor or IG will make an initial decision regarding whether the requested records exist and whether they will be made available to the requester. The Solicitor or IG will promptly communicate that initial decision to you in writing or other appropriate form.

(b) When the initial decision is to provide access to the requested records, the writing or other appropriate communication notifying you of the decision will:

(1) Briefly describe the records to be made available;

(2) State whether any records maintained about you in the system of records in question are not being made available;

(3) State whether any further verification of your identity is necessary; and

(4) Notify you of any fee charged under § 2412.13.

(5) The Solicitor or IG will promptly disclose the requested records to you upon payment of any applicable fee under § 2412.13.

(c) When the initial decision is not to provide access to requested records and accountings, the Solicitor or IG will, by writing or other appropriate communication, explain the reason for that decision. The Solicitor or IG will only refuse to provide you access when:

(1) Your verification of identity is inadequate under § 2412.5(d);

(2) No such records are maintained or an exemption applies;

(3) Your information is contained in, and inseparable from, another individual's record;

(4) The requested records have been compiled in reasonable anticipation of civil or criminal action or other proceedings.

§ 2412.8 Accountings of disclosures and requests for accountings.

(a) The FLRA's Solicitor or IG, as appropriate, will maintain a record (''accounting'') of every instance in which records about an individual are made available, pursuant to this part, to any person other than:

(1) Officers or employees of the Authority, the General Counsel, the IG, or the Panel in the performance of their duties; or

(2) Any person pursuant to the Freedom of Information Act, as amended, 5 U.S.C. 552.

(b) The accounting which shall be retained for at least five (5) years or the life of the record, whichever is longer, shall contain the following information:

(1) A brief description of records disclosed;

(2) The date, nature and, where known, the purpose of the disclosure; and

(3) The name and address of the person or agency to whom the disclosure is made.

(c) Except when accountings of disclosures are not required to be kept (as stated in paragraph (a) of this section) or are withheld accounting of disclosures that were made pursuant to 5 U.S.C. 552a(b)(7), you may make a request for an accounting of any disclosure that has been made by the Solicitor or IG, to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing to the FLRA's Solicitor or IG, as appropriate, following the procedures in § 2412.5.

(d) The FLRA's Solicitor or IG, as appropriate, will respond to your request for access to an accounting following the procedures in § 2412.7. You may appeal the Solicitor or IG's decision on your request under the procedures in § 2412.12.

§ 2412.9 Requests for amendment or correction of records.

(a) Unless the record is not subject to amendment or correction as stated in paragraph (b) of this section, you may make a request for amendment or correction of an Authority, General Counsel, IG, or Panel record about yourself or about an individual for whom you are a parent or guardian by submitting a written request to the FLRA's Solicitor or IG, as appropriate, following the procedures in § 2412.5. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. Please note that a requester bears the burden of proving by the preponderance of the evidence that information is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is in more than one system of records, your request should state that.

(b) The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Records in systems of records that have been exempted from amendment and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the **Federal Register**; and

(4) Records compiled in reasonable anticipation of a civil action or proceeding.

§ 2412.10 Initial decision on amendment or correction.

(a) Within ten (10) working days after receiving your request for amendment or correction, the FLRA's Solicitor or IG, as appropriate, will acknowledge receipt of the request and, under normal circumstances, the Solicitor or IG will notify you, by mail or other appropriate means, of the decision regarding the request not later than thirty (30) working days after receiving of the request.

(b) The notice of decision will include:

(1) A statement of whether the Solicitor or IG has granted or denied your request, in whole or in part;

(2) A quotation or description of any amendment or correction made to any records; and

(3) When a request is denied in whole or in part, an explanation of the reason for that denial and of your right to appeal the decision to the Chairman of the Authority, pursuant to § 2412.12.

§ 2412.11 Amendment or correction of previously disclosed records.

When a record is amended or corrected pursuant to § 2412.10, or a written statement of disagreement filed, pursuant to § 2412.12, the FLRA's Solicitor or IG, as appropriate, will give notice of that correction, amendment, or written statement of disagreement to all persons to whom such records or copies have been disclosed, as recorded in the accounting kept pursuant to § 2412.8.

§ 2412.12 Agency review of refusal to inform, to provide access to, or to amend or correct records.

(a) If your request for information regarding whether a system of records contains information about you or an individual for whom you are a parent or guardian, or your request for access to, or amendment or correction of, records of the Authority, the General Counsel, the IG, or the Panel, or an accounting of disclosure from such records, has been denied in whole or in part by an initial decision, you may, within thirty (30) working days after your receipt of notice of the initial decision, appeal that decision by filing a written request by mail to the Chairman of the Authority at the Authority's offices in Washington, DC, or by email to *privacy@flra.gov*.

(b) The appeal must describe:

(1) The request you initially made for information regarding, access to, or the amendment or correction of, records;

(2) The initial decision of the FLRA's Solicitor or IG on the request; and

(3) The reasons why that initial decision should be modified by the Chairman of the Authority.

(c) Not later than thirty (30) working days after receipt of a request for review (unless such period is extended by the Chairman of the Authority or the

Chairman's designee for good cause shown), the Chairman of the Authority or the Chairman's designee will notify you of their decision on your request. If the Chairman of the Authority or the Chairman's designee upholds the initial decision not to inform the individual of whether requested records exist, or not to provide access to requested records or accountings, or not to amend or correct the records as requested, then the Chairman of the Authority or the Chairman's designee will notify you of your right:

(1) To judicial review of the Chairman of the Authority or the Chairman's designee's decision pursuant to 5 U.S.C. 552a(g)(1); and

(2) To file with the FLRA's Solicitor or IG, as appropriate, a concise written statement of disagreement with the determination. That written statement of disagreement will be made a part of the record and will accompany that record in any use or disclosure of the record.

§ 2412.13 Fees.

(a) Your Privacy Act request for access to records will be considered an agreement to pay all applicable fees charged under paragraph (b) of this section, up to $25.00. When making a request, you may specify a willingness to pay a greater or lesser amount.

(b) There will be a charge of twenty-five cents per page for paper-copy duplication of records disclosed under this part. For copies of records produced on tapes, disks, or other media, the Solicitor or IG will charge the actual cost of production, including operator time.

(c) The FLRA's Solicitor or IG may waive or reduce any charges under this section whenever it is in the public interest to do so.

§ 2412.14 Penalties.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the Authority, the General Counsel, the IG, or the Panel under false pretenses will be subject to criminal prosecution under 5 U.S.C. 552a(i)(3), which provides that such person shall be guilty of a misdemeanor and fined not more than $5,000.

§ 2412.15 Exemptions.

(a) *Files of FLRA's Office of Inspector General (OIG) compiled for the purpose of a criminal investigation and for related purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the FLRA hereby exempts the system of records entitled ''FLRA/OIG–1, Office of Inspector General Investigative Files,'' insofar as it consists of information compiled for the purposes of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11) and (i).

(b) *OIG files compiled for other law enforcement purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the FLRA hereby exempts the system of records entitled ''FLRA/OIG–1, Office of Inspector General Investigative Files,'' insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

Dated: November 28, 2023.

Thomas Tso,

Solicitor and Federal Register Liaison.

[FR Doc. 2023–26516 Filed 12–1–23; 8:45 am]

BILLING CODE 7627–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1899; Airspace Docket No. 23–ASO–37]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, and Establishment of Class E Airspace; Winston Salem, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace extending upward from 700 feet above the surface for Smith Reynolds Airport, Winston Salem, NC. This action also establishes Class E airspace designated as an extension to a Class D surface area and amends verbiage in the description.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

FAA Order JO 7400.11H Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class D and Class E airspace in Winston Salem, NC. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–1899 in the **Federal Register** (88 FR 67126; September 29, 2023), proposing to amend Class D and Class E airspace extending upward from 700 feet above the surface for Smith Reynolds Airport, Winston Salem, NC. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One anonymous comment supporting this action was received. The commenter also showed concerns about how this airspace action might affect the environment. The FAA discusses potential environmental impacts in the Environmental Review section.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that

order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class D airspace for Smith Reynolds Airport, Winston Salem, NC, by adding an extension from the 4.2-mile radius of the airport to 5.8 miles northwest of the airport. The Class E airspace extending upward from 700 feet above the surface radius is increased to 9 miles (previously 6.6 miles), and all extensions are removed. Moreover, the action removes REENO NDB from the airspace description as it has been decommissioned. This action also establishes Class E airspace designated as an extension to a Class D surface area from the 4.2-mile radius to 6.5 miles southeast of the airport. In addition, this action removes the city name from the airport description header as per FAA Order 7400.2. It replaces Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the Class D airspace description. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Winston Salem, NC [Amended]

Smith Reynolds Airport, NC
(Lat 36°08′01″ N, long 80°13′19″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of the Smith Reynolds Airport and 1 mile on each side of the 325° bearing of the airport, extending from the 4.2-mile radius to 5.8 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or E Surface Area.

* * * * *

ASO NC E4 Winston Salem, NC [Established]

Smith Reynolds Airport, NC
(Lat 36°08′01″ N, long 80°13′19″ W)

That airspace extending upward from the surface within 1 mile on each side of the 145° bearing from Smith Reynolds Airport, extending from the 4.2-mile radius of the airport to 6.5 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Winston Salem, NC [Amended]

Smith Reynolds Airport, NC
(Lat 36°08′01″ N, long 80°13′19″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Smith Reynolds Airport.

* * * * *

Issued in College Park, Georgia, on November 29, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–26557 Filed 12–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 12276]

Temporary Modification of Category VIII of the U.S. Munitions List

ACTION: Final rule; notification of temporary modification.

SUMMARY: The Department of State (the Department), pursuant to its regulations and in the interest of the security of the United States, temporarily modifies the United States Munitions List (USML) Category VIII.

DATES: This temporary modification is effective December 4, 2023 and will expire on December 1, 2024 or when terminated by the Department, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2217; email *DDTCCustomerService@state.gov* SUBJECT: Temporary Modification—Note to paragraph (h)(1) of USML Category VIII.

SUPPLEMENTARY INFORMATION: On April 16, 2013, the Department published a final rule revising Category VIII of the USML (78 FR 22740). That final rule added USML Category VIII(h)(1) to describe parts, components, accessories, attachments, and equipment specially designed for certain advanced U.S.-origin aircraft. Paragraph (h)(1) was the

exception to the revised Category VIII's positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. Other parts, components, accessories, and attachments specially designed for a military aircraft and related articles became subject to the new ''600 series'' controls in Category 9 of the Commerce Control List (CCL).

On October 3, 2013, the Department published a rule (78 FR 61750) that added a Note to USML Category VIII(h)(1) to clarify that parts, components, accessories, and attachments that are common to aircraft enumerated in paragraph (a) but not identified in paragraph (h)(1), and those identified in paragraph (h)(1), are not specially designed.

On November 21, 2016, the Department published another final rule revising Category VIII (81 FR 83126), which updated the list of aircraft in paragraph (h)(1) and revised the Note to paragraph (h)(1) to incorporate technical corrections and enhance its clarity. The rule also removed equipment from paragraph (h)(1) and created paragraph (h)(29) to describe certain equipment specially designed for articles described in paragraph (h)(1). Paragraph (h)(1) currently describes parts, components, accessories, and attachments specially designed for the following U.S.-origin aircraft: B–1B, B–2, B–21, F–15SE, F/A–18 E/F, EA–18G, F–22, F–35, and future variants thereof; or the F–117 or U.S. Government technology demonstrators. Paragraph (h)(1) further states that parts, components, accessories, and attachments of the F–15SE and F/A–18 E/F that are common to earlier models of these aircraft, unless listed elsewhere in paragraph (h) of Category VIII, are subject to the EAR.

The Note to paragraph (h)(1) states that paragraph (h)(1) does not control parts, components, accessories, and attachments that are common to aircraft described in paragraph (a) of Category VIII but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common to only the F–16 and F–35 is not specially designed for purposes of paragraph (h)(1). A part common to only the F–22 and F–35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of paragraph (h)(1), unless one of the other paragraphs under ITAR § 120.41(b) is applicable.

Section 126.2 of the ITAR provides that the Deputy Assistant Secretary for Defense Trade Controls may order the temporary suspension or modification of any or all provisions of the ITAR when in the interest of the security and foreign policy of the United States. This authority may also be exercised by the Assistant Secretary for Political-Military Affairs according to ITAR § 120.1(b).

The Department assesses that it is in the security and foreign policy interests of the United States to allow manufacturers to apply for export authorizations to participate in development of the KF–21 aircraft by reusing certain defense articles described in paragraph (h)(1) without removing those defense articles from the USML simply because they are re-used in the KF–21.

Accordingly, pursuant to ITAR § 126.2, the Assistant Secretary of State for Political-Military Affairs hereby temporarily modifies the Note to paragraph (h)(1) of USML Category VIII such that parts, components, accessories, and attachments specially designed for aircraft identified in paragraph (h)(1) are not released from that paragraph due to their reuse in the KF–21 aircraft or variants thereof.

The Department assessed that this temporary modification does not change the export jurisdiction or classification of any existing commodities, as it only prevents the possibility of future release from paragraph (h)(1) due to use in the KF–21, which has not yet entered into production. Therefore, when the KF–21 enters production, any paragraph (h)(1) commodities authorized for export for this purpose will retain their current export classification described in paragraph (h)(1).

This temporary modification will be effective until December 1, 2024, or when terminated by the Department, whichever occurs first.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from section 553 of the Administrative Procedure Act (APA) pursuant to section 553(a)(1) as a military or foreign affairs function of the United States.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department assesses that this rule is not a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Orders 12866 (as amended by Executive Order 14094) and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been deemed a ''significant regulatory action'' under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For the reasons stated in the preamble, the Department of State amends Title 22, Chapter I, Subchapter M, part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. Amend § 121.1 under Category VIII by revising the Note to paragraph (h)(1) to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category VIII—Aircraft and Related Articles

* * * * *

Note to paragraph (h)(1): This paragraph does not control parts, components, accessories, and attachments that are common to aircraft, other than the KF–21 and variants thereof, described in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common to only the F–16 and F–35 is not specially designed for purposes of this paragraph. A part common to only the F–22 and F–35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b) of this subchapter. Commodities otherwise described in this paragraph that are utilized in the KF–21 are not released from this paragraph due to use in the KF–21.

* * * * *

Jessica Lewis,

Assistant Secretary, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2023–26673 Filed 11–30–23; 4:15 pm]

BILLING CODE 4710–25–P

Proposed Rules

Federal Register
Vol. 88, No. 231
Monday, December 4, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–22–0052]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Amendments to the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on proposed amendments to Marketing Order No. 930, which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The proposed amendments would modify the basis for calculating district representation on the Cherry Industry Administrative Board (''Board''), change the starting date for the term of office for Board members, simplify the way a Board member's sales constituency is determined, clarify how the sales constituency applies to alternate Board members, change the timeframe for submitting nominations, and clarify when districts are subject to volume regulation.

DATES: Comments must be received by February 2, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public on the internet at the address provided above. Please be advised that the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: Thomas Nalepa, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: *MarketingOrderComment@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of growers and handlers of tart cherries operating within the production area and a public member.

Section 8c(17) of the Act (7 U.S.C. 608c(17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued, and producers and handlers would be allowed to vote for or against the proposed amendments. AMS would then issue a final rule effectuating any amendments approved by producers and handlers in the referendum.

AMS is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in

accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. AMS may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order. This proposed rule encompasses a number of changes that are primarily administrative and modernizing in nature. These changes would clarify regulatory text or align it with current industry practices. Changes would also simplify the administration of seating the Board. In addition, as discussed in the ''Initial Regulatory Flexibility Analysis'' section below, this proposed rule is not anticipated to impose any new costs on affected entities. The amendments would apply equally to all producers and handlers, regardless of size. The proposed amendments also have no additional impact on the reporting, recordkeeping, or compliance costs of small businesses.

The Board unanimously recommended all the proposed amendments to the Order following deliberations at a public meeting held on February 15, 2022, except one dissenting vote on the method for establishing a member's sales constituency. The Board submitted its formal recommendation to amend the Order through the informal rulemaking process on April 8, 2022. At AMS's request, the Board conducted an additional meeting on December 15, 2022, to publicly clarify its original intent that the sales constituency provisions of the proposal would apply to both growers and handlers, and that sales constituency would be established at the time of nomination. Specifically, the Board adjusted the language of the initial February 15th recommendation for when a member's sales constituency is established from ''nomination and appointment'' to just at the time of ''nomination.'' The Board then unanimously voted to clarify that the established sales constituency applies to both handlers and growers for the duration of the term of office. A separate vote to remove the words ''and appointment'' from the language had one dissenting individual who believed sales constituency should be calculated at the time of appointment. The proposed rule would:

- Modify the method for allocating Board seats to a district so that it is based on the district's maximum volume of production in the most recent five harvests (Proposal 1);
- Change the starting date for the term of office for Board members (Proposal 2);
- Modify the basis for determining a Board member's sales constituency when a member has multiple affiliations (Proposal 3);
- Clarify how sales constituency applies to alternate Board members (Proposal 4);
- Adjust the timeframe for submitting nominations to USDA (Proposal 5); and
- Clarify when districts are subject to the Order's volume regulations (Proposal 6).

Proposal 1—Establishment of Membership

Section 930.20 establishes the Board and provides a method for calculating its membership, which is drawn from nine subdivisions (or ''districts'') in the production area. Section 930.20(b) states that district representation on the Board is based on the previous three-year average production in the district and may vary depending on the production levels of the district. If the three-year average production in a district changes, so that a different number of seats should be allocated to it, § 930.20(f) states that the Board's membership must be adjusted accordingly. Currently, the Board is required to calculate the three-year average production in each of the nine districts annually. This updated yearly calculation of the three-year average may result in a change to the number of representative seats in a given district.

This method for determining the Board's membership has proved to be inefficient and costly. If the Board's calculation of the three-year average production in a district reduces the number of seats for the district, the members of that district follow the procedures specified in § 930.120 and recommend to the Board who among them should be removed from office. The Board then makes a recommendation to the Secretary for approval of the member and alternate to be removed from the Board. This process is time-intensive and disrupts the continuity of the Board's operations by removing members and alternates from the Board as frequently as every year. If the new three-year average calculation results in an increase to a district's representation on the Board, the Board staff would conduct an election in that district to fill the newly established seat. This process costs the Board significant time and financial resources because it requires conducting additional outreach and nominations annually. Consequently, the Board discussed ways to alter § 930.20 to provide a more sustainable method for calculating its membership.

The Board recommended modifying § 930.20(b) so that district representation on the Board is based on each district's maximum production in the most recent five harvest periods, rather than on the district's average production over the previous three years. The Board further recommended that the proposed calculation would commence from the first season's harvest following implementation of this action. In addition, § 930.20(f) would be revised to specify that each district's maximum production for the most recent five harvests would be determined every five years and as soon as possible after the most recent year's production is known. Production numbers would be calculated after the Board receives final reports in early September. The five-harvest periods for calculating maximum volume for each district would continue in perpetuity until otherwise modified through a Board recommendation and rulemaking. The choice of the five-year period is based on balancing the interests of the industry. A five-year period would provide continuity of district representation on the Board, yet it would also allow trends and/or changes impacting tart cherry production to be accommodated periodically.

The Board also recommended amending § 930.20 to insert two new sections, §§ 930.20(g) and 930.20(h). Section 930.20(g) would further clarify that in the event a district experiences

substantial changes requiring reconsideration of the number of seats in the district, the Secretary, based on the Board's recommendation, could allocate a different number of seats to the district. In deciding whether to make any such recommendation, the Board would consider several factors. These factors would include shifts in the tart cherry acreage and/or the number of bearing trees within districts and within the production area during recent years, the volume of tart cherries produced in the district, the importance of either increased or decreased production in its relation to existing districts, the equitable relationship of Board membership and districts, enhanced economies to producers through more efficient administration of Board reapportionments, and other relevant factors.

Additionally, § 930.20(h) would state that no change in the number of seats allocated to a district could become effective less than 30 days prior to the date on which the term of office begins each year, and no recommendation for a change in allocated seats could be made less than six months prior to such date. Current § 930.20(g), (h), and (i) would be redesignated § 930.20(i), (j), and (k), respectively.

The Board considered alternatives to the proposed five-year period for determining a district's maximum production, including 3-year and 10-year periods. The Board assessed each period and cross-compared historical production data to review the hypothetical impact of these options on district representation levels. The Board determined the five-year period calculation as optimal because it induced the least volatility in the seat allocations to each district. Ultimately, the Board believes this proposal would stabilize its composition and improve the efficiency of its operations.

Proposal 2—Starting Date for Term of Office

Section 930.22 states that the term of office for Board members and alternates is three fiscal years. Section 930.7 defines a fiscal year as the 12-month period beginning on July 1 of any year and ending on June 30 of the following year. These dates have been used as the beginning and end dates for the term of office since the inception of the Order. Proposal 2 would adjust the term of office to start on June 1 and end on May 31 of the third subsequent year. This change would allow for activities such as Board forecasting, planning, and final recommendations for the optimum supply volume to be conducted by the same membership, which industry believes will improve Board operations. The optimum supply volume is referred to by the Board as the Optimum Supply Formula (OSF).

Under the Order's current marketing policy located in § 930.50, the Board is required to meet on or about July 1 of each crop year to establish a preliminary free market tonnage percentage and a preliminary restricted percentage, and to meet again no later than September 15 to make any modifications to the preliminary percentages based on consideration of actual production data, inventories, and other current economic information. Therefore, the final OSF recommendation incorporates the updated market data, and the Board reviews the preliminary estimates calculated by the prior Board membership during its June meeting (which is when the Board typically holds the meeting required to be held on or about July 1). However, the preliminary recommendation from its June meeting can impact industry operations during harvest in July and August.

Therefore, to establish greater continuity of Board operations that is stabilizing for industry, the Board recommended changing § 930.22 so the term of office would be three years, starting on June 1 and ending on May 31 of the third subsequent year, prior to the start of the crop year. This would allow the same Board members to calculate both the preliminary estimate and the final OSF recommendation.

In addition, the Board usually formulates its budget and assessment rates for the upcoming season at its June meeting. With this change, the newly seated Board would also be making these decisions.

Proposal 3—Determination of Member Sales Constituency

This proposal would clarify how the term ''sales constituency'' is applied to growers and handlers. As defined in § 930.16, a sales constituency is a common marketing organization, brokerage firm, or individual representing a group of handlers and growers. An organization that receives consignments of cherries but does not direct where the consigned cherries are sold is not a sales constituency. The determination of a Board member's (or prospective Board member's) sales constituency is important because, in a district with multiple Board members, only one member may be from a given sales constituency. This limitation is intended ''to achieve a fair and balanced representation on the Board'' and ''to prevent any one sales constituency from gaining control of the Board'' (7 CFR 930.20(g)).

The lack of additional guidance in the Order relating to sales constituency determinations has created significant challenges. First, the lack of guidance has led to confusion in the industry about how these determinations should be made. In addition, under the current regulatory criteria, Board members and nominees may be found to have multiple sales constituencies since many growers and handlers conduct business with several entities at the same time. Further, these business transactions may change year-to-year, or even within a year. The complicated and volatile nature of sales constituency determinations under the current rules means that Board members may become ineligible to serve before their terms expire, and this contributes to high turnover rates among members. These issues have also made it increasingly difficult to identify qualified candidates to serve on the Board, exacerbating the economic conditions that have caused the tart cherry industry to shrink over time.

The proposal would address these problems by simplifying sales constituency determinations and by providing that such determinations, once made at the time of a prospective member's nomination, would remain in place until the end of the member's term of office. Specifically, this proposal would amend § 930.23(b) to provide that a grower's sales constituency is determined by the handler that purchases the ''majority of pounds'' of the grower's cherries at the time of their nomination. A handler's sales constituency would be the entity that directs the sales of its cherries, which is commonly the handler itself. Sales constituency determinations for growers and handlers would be based on the most recently harvested crop at the time of nomination. This assigned sales constituency would remain in effect throughout the grower's or handler's term of office. Since growers and handlers do business with multiple entities, this clarification would standardize the process for determining sales constituency and ensure that the sales constituency relationship would remain in place throughout a member's three-year term of office. Therefore, the Board recommended this proposal to address industry confusion on how to accurately determine a nominee's sales constituency relationship.

This proposal will help keep the sales constituency static throughout the term of office and stabilize Board membership, thereby reducing turnover interruptions prior to the term of office

ending for the member. As explained above, this stability is becoming more important given business attrition and the economic conditions that contribute to the shrinking of the tart cherry industry over time, which has made identifying qualified candidates to serve on the Board increasingly more difficult. In sum, the Board seeks to limit the impact of any single sales constituency and maintain a wide array of perspectives and industry interests while simultaneously incorporating the flexibility to fully seat the Board. This proposal would promote diverse Board representation to reflect industry's business interests while retaining the capacity to seat diverse representation for the entire three-year term of office in each district. This proposal also makes clear that both handlers and growers are subject to sales constituency requirements.

Proposal 4—Alternate Member Sales Constituency

Section 930.28 establishes the criteria to seat an alternate member at a Board meeting during the absence of the member for whom that member serves as an alternate. The current language does not include any provision that incorporates sales constituency with regard to alternate members being seated. This proposal clarifies the interpretation of the regulatory language regarding who may represent a member seat within a district, and the intent of industry on nominating and seating an alternate member. When the Order was initially established, the intent of industry regarding sales constituencies was to permit the seating of alternate members even though they were of the same sales constituency as the member for whom they serve as an alternate. It was understood that members of the same sales constituency could occupy the member and the corresponding alternate seat for that chair on the Board. The proposed amendment would confirm this original interpretation of the sales constituency limitation and clarify when an alternate may serve in place of a member.

Before 2018, the Board's policy was to allow members and their alternates to be from the same sales constituency, even though this practice was not explicitly codified. However, in 2018 a district court issued an order that disapproved of this practice. In *Burnette Foods Inc.* v. *United States Department of Agriculture,* the United States District Court for the Western District of Michigan held that CherrCo, Inc., a grower cooperative, was a sales constituency. *Burnette Foods, Inc.* v. *U.S. Dep't of Agriculture,* No. 1:16–cv–21, 2018 WL 538583, at *4 (W.D. Mich. Jan. 24, 2018). In connection with this holding, the court issued an order stating that ''Not more than one Board member (*including an alternate Board member*) may be from, or affiliated with, CherrCo in those districts having more than one seat on the Board.'' *Burnette Foods,* ECF No. 51 (Mar. 9, 2018) (emphasis added).

USDA's implementation of the district court's order made it difficult to find and seat representatives on the Board who did not have a ''constituency conflict'' (that is, a shared sales constituency) with other members and alternates on the Board. Under USDA's implementation of the order, sales of cherries by a grower to more than one handler required that all such handler relationships be considered in assessing constituency conflicts. All these grower relationships were compared to all constituencies of other members and alternates serving on the Board from a multi-seat district, including the member holding the seat for which an alternate was standing for nomination and election. With this interpretation, if any conflict existed between a candidate and any other Board representative in the same district, alternates included, the candidate could not be nominated for appointment to the Board.

USDA appealed the district court's decision to the United States Court of Appeals for the Sixth Circuit, which reversed the district court's judgment and remanded the case for entry of judgment in USDA's favor. *Burnette Foods, Inc.* v. *U.S. Dep't of Agriculture,* 920 F.3d 461, 464, 470 (6th Cir. 2019). However, because the Sixth Circuit ruled in USDA's favor on a preliminary issue, it did not address the question of whether (or how) the sales constituency limitation in § 930.20(g) applies to alternate members.

To clarify this issue, the Board recommended adding language to § 930.28 to explicitly state how the sales constituency limitation applies to alternate members. Currently, § 930.20(g) provides that any conflict of sales constituency in a district for Board members is not allowed. The current language in § 930.20(g) does not address how an alternate's sales constituency affects a member's qualification to serve. The proposed amendment to § 930.28 would add the necessary language to clarify the Board's intentions when seating alternate members.

As previously mentioned, attrition and difficult economic conditions are shrinking the tart cherry industry. In 2021 and 2022, three tart cherry handling operations closed. The Board also recently had open alternate seats as a result of the lawsuit surrounding the sales constituency clause. Finding and electing candidates to serve has become increasingly more difficult. The current process of determining sales constituency adds to this difficulty, especially when a member's sales constituency may change yearly, and the existing process significantly limits the availability of qualified candidates. To seat a functioning Board that appropriately represents growers and handlers from their corresponding districts, the Board believes that members of the same sales constituency must be allowed to sit as member and alternate on the Board. This was commonly understood by industry as how the Order was originally intended to operate. This is also how industry interpreted the Order until 2018.

This amendment would clarify the regulations and confirm these original intentions and the interpretation of sales constituency for alternates. The proposal would reclassify the original paragraph comprising § 930.28 as § 930.28(a) and add two new paragraphs § 930.28(b) and § 930.28(c). Section 930.28(b) would state that alternate members may be from the same sales constituency as the member for whom they serve as an alternate. It would also provide that, if a member and their alternate are absent from a meeting of the Board, another alternate of a different district may act for the member following the requirements of § 930.28(a), provided this does not create a sales constituency conflict with the other members of that district. Section 930.28(c) would allow the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of § 930.28.

Proposal 5—Submission of Nominations

Preparing and completing Board member nomination packages for submission to the Secretary entails several stages of work that require months to complete. The process begins with the issuance of notices of open seats transmitted to industry, followed by the solicitation of nominations in the applicable districts. Grower members and at-large members (*i.e.,* members in districts with only one seat and who may be growers or handlers) are nominated first, then handler members are nominated. Once this is completed, the Board focuses efforts on the nomination of alternate members, a process that adds several more weeks to the timetable.

Currently, the Board is required to announce the expiration of a member's

term of office and solicit nominations for the position at least 180 days before the term expires. Board staff must then complete the above-mentioned steps and submit the nomination package to the Secretary or Board at least 120 days before the term expires, in accordance with § 930.23(b)(7). This means the Board may have as few as 60 days (180 days minus 120 days) to prepare and submit a nomination package that adheres to the 120-day deadline. In practice, the Board staff cannot complete the process by the 120-day deadline. Therefore, the Board has recommended reducing the number of days in advance of a term's expiration that nominations must be submitted from 120 to 60 days. By making the submission date 60 days prior to the end of the term of the outgoing Board member, the Board staff would have an additional 60 days to conduct outreach for nominees and complete the nomination process.

This proposal is an administrative change for the Board. Aside from the proposed change, the Board staff would continue to conduct the nomination and election processes in the same manner as they have been conducted since the inception of the Order. This amendment would adjust by 60 days the deadline for submission of nominations to the Secretary for the selection of the elected members and alternates. This change would not adversely impact the USDA's requirement to carry out the nomination or election processes.

Proposal 6—Districts Subject to Volume Regulation

This proposal would change language in § 930.52 to address two industry concerns about how this section establishes which districts are subject to the Order's volume regulations. The first issue involves the number of years that § 930.52(a) considers in determining a district's average production of tart cherries. The second issue involves § 930.52(d)'s exemption from volume regulation based on a district's ''processed production,'' which is an undefined term. These two issues have created confusion when calculating production in a district.

Section 930.52 establishes which districts in the production area are subject to the Order's volume regulations. Section 930.52(a) states that, as a general rule, the districts in which handlers are subject to the volume regulations are those in which the average annual production of cherries over the prior three years has exceeded six million pounds. Handlers become subject to volume regulation in the crop year that follows any three-year period in which the six-million-pound average production requirement is exceeded in that district.

Currently, the Board uses all tart cherry production for each district in calculating the OSF and for determining whether a district is regulated in any given year. The industry's production information comes from multiple sources. Handlers provide the Board with the amount of fruit that growers deliver to their facilities and from which district produced the fruit. Some growers divert cherries in the field in those years when a restriction is calculated under the OSF. The Board oversees and calculates the volume of cherries diverted from fields by growers. Using all available information, the Board determines the production of tart cherries by district that is used to calculate the OSF for any given year.

Tart cherry production can vary dramatically from year to year, making the production totals extremely volatile over multiple seasons. To make the average calculation for each district less volatile, the Board recommended moving to a five-year average instead of the current three-year average. The additional two years included in the calculation provide a longer window to assess the average production in each district, thereby reducing the weight each season has in determining the average number. The Board further noted that extending the period from three to five years would have a minimal impact on the regulation of the various districts and allow for more consistent averages when calculating the six-million-pound threshold for determining if a district is subject to regulation. Consequently, the Board unanimously recommended changing the period for calculating the average pounds for each district from three to five years in § 930.52(a).

The second issue involves § 930.52(d)'s use of the term ''processed production.'' Section 930.52(d) exempts a district from volume regulation in a particular year if it produces less than 50 percent of its ''average annual processed production'' in the previous five years. At present, industry operates with the understanding that in years with volume restriction, grower diverted cherries are subtracted from the district's production when calculating the five-year average. However, since grower diverted cherries represent an insignificant portion of the district's total production, this has a negligible impact on the five-year average. By eliminating the term ''processed'' from § 930.52(d), it would be clearer to the industry that ''production'' means all cherries produced in a district when determining the exempt status. Therefore, in years where there is a restriction, all production, including grower diverted cherries, would be part of the production average. This change would simplify the calculation for the Board and keep the calculation consistent in years with and without volume restriction. A district's production average is most impacted by weather conditions from year to year, and not the volume of grower diverted fruit.

Therefore, eliminating the word ''processed'' from ''processed production'' would not meaningfully alter the way the industry or the Board are already operating, but it would simply the five-year production average and make the calculation consistent from year to year. Elimination of the term would also make it clearer to the industry to include all tart cherries produced in a district when determining the regulation status of districts. The Board unanimously recommended this proposed change that would remove the term ''processed'' from § 930.52(d).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 tart cherry growers in the production area and approximately 40 handlers subject to regulation under the Order. At the time this analysis was performed, the Small Business Administration (SBA) defined small agricultural producers of tart cherries as those having annual receipts equal to or less than $3,500,000 (Other Noncitrus Fruit Farming, North American Industry Classification System Code 111339). Small agricultural service firms were defined as those having annual receipts equal to or less than $34,000,000 (Postharvest Crop Activities, North American Industry Classification System Code 115114) (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reported that the 2021–22 value of the tart cherry crop for processed utilization was approximately

$83 million. This tart cherry production was 171.0 million pounds and the season average grower price for processed tart cherries was $0.485 per pound. Dividing the crop value by the estimated number of producers (400) yields an estimated average annual receipts per producer of $207,500 ($83 million divided by 400 producers). This is well below the SBA threshold for small producers.

An estimate of the season average price of $0.94 per pound received by handlers for processed tart cherries was derived from USDA's purchases of dried tart cherries for feeding programs in the 2021–22 season at an average price of $4.70 per pound. The dried cherry price was converted to a raw product equivalent price of $0.94 per pound at an industry recognized ratio of five to one ($4.70 divided by 5 equals $0.94). Multiplying this price by 2021 total processed utilization of 171.0 million pounds results in an estimated handler-level tart cherry value of $160.7 million ($0.94 per pound multiplied by 171.0 million pounds). Dividing this figure by the number of handlers (40) yields estimated average annual receipts per handler of approximately $4.0 million ($160.7 million divided by 40 handlers), which is well below the SBA threshold of $34 million for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This proposed rule would revise multiple provisions in the Order's subpart regulating handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin:

- *Proposal 1:* modify the method for allocating Board seats to a district so that it is based on the district's maximum volume of production in the most recent five harvests;
- *Proposal 2:* change the starting date for the term of office for Board members;
- *Proposal 3:* modify the basis for determining a Board member's sales constituency when a member has multiple affiliations;
- *Proposal 4:* clarify how sales constituency applies to alternate Board members;
- *Proposal 5:* adjust the timeframe for submitting nominations to USDA; and
- *Proposal 6:* clarify when districts are subject to the Order's volume regulations.

The proposed changes may be considered either modifications of, or clarifications to existing administrative Board processes, and affect only the Board's activity. AMS does not anticipate that any of the proposed changes will increase costs on producers or handlers. The goal of these proposed changes is to help further standardize and stabilize Board membership and improve Board efficiency and decision making throughout the year.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements are necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The Board's meetings are widely publicized throughout the tart cherries production area. All interested persons are invited to attend the meetings and encouraged to participate in Board deliberations on all issues. Like all Board meetings, the meetings held on February 15 and December 15, 2022, were public, and all entities, both large and small, were encouraged to express their views on the proposed amendments.

Interested persons are invited to submit comments on the proposed amendments to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following analysis of any comments received on the amendments in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and growers and handlers would be provided the opportunity to vote for or against the proposed amendments. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. A final rule would then be issued to effectuate any amendments favored by growers and handlers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 930; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 930 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 930 as hereby proposed to be amended regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 930 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 930 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries produced or packed in the production area; and

5. All handling of tart cherries grown or handled in the production area, as defined in Marketing Order 930, is in the current of interstate or foreign

commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on the amendments proposed in this rule will be analyzed. If AMS determines to proceed based on all the information presented, a producer and handler referendum would be conducted to determine the industry support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers and handlers participating in the referendum.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 930 as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 930.20 by:
■ a. Revising paragraph (b) introductory text, and paragraph (f);
■ b. Redesignating paragraphs (g), (h), and (i) as paragraphs (i), (j), and (k), respectively; and
■ c. Adding new paragraphs (g) and (h).

The revisions and the additions read as follows:

§ 930.20 Establishment and membership.

* * * * *

(b) District representation on the Board shall be based upon the maximum volume of production in the most recent five harvests in the district and shall be established as follows:

* * * * *

(f) If the maximum production for the most recent five harvests in a district changes so that a different number of seats should be allocated to the district, then the Board will be reestablished by the Secretary and such seats will be filled according to the applicable provisions of this part. Each district's maximum production for the five most recent harvests shall be determined every five years and as soon as possible after the most recent year's production is known.

(g) In the event of substantial changes within a district that require reconsideration of the number of seats allocated to the district, the Board may recommend, and pursuant thereto, the Secretary may approve, allocation of a different number of seats to the district. In making any such recommendation, the Board shall consider:

(1) Shifts in tart cherry acreage and/or the number of bearing trees within districts and within the production area during recent years;

(2) The volume of tart cherries produced in the district;

(3) The importance of either increased or decreased production in its relation to existing districts;

(4) The equitable relationship of Board membership and districts;

(5) Economies to result for producers in promoting efficient administration of the Board due to reapportionments;

(6) Other relevant factors.

(h) No change in the allocated number of seats for district(s) may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for a change in allocated seats may be made less than six months prior to such date.

* * * * *

■ 3. Revise § 930.22 to read as follows:

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board shall be for three years beginning on June 1 of the year when appointed and ending on May 31 three years later: Provided that, of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one year, one-third of such members and alternates shall serve only two years, and one-third of such members and alternates shall serve three years; and one-half of the initial members and alternates from Districts 4 and 7 shall serve only one year, and one-half of such initial members and alternates shall serve two years (determination of which of the initial members and their alternates shall serve for one, two, or three years shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified, and are appointed. The consecutive terms of office of grower, handler and public members and alternate members shall be limited to two 3-year terms, excluding any initial term lasting less than three years. The term of office of a member and alternate member for the same seat shall be the same. The term of office specified in this section will become effective for all members, including members whose terms are not expiring, upon the first nomination cycle following the effectiveness of the final rule establishing this new term of office.

The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

■ 4. Amend § 930.23 by revising paragraphs (b)(2) through (4) and (7) and (c)(3)(ii) to read as follows:

§ 930.23 Nomination and election.

* * * * *

(b) * * *

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of one or more handler(s), other than the nominee, from the nominee's district who is or are eligible to vote in the election and that handle(s) a combined total of no less than five percent (5%) of the previous three-year average production handled in the district. Provided, that this requirement shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(i). The requirement that the petition form be signed by a handler other than the nominee shall not apply in any district where fewer than two handlers are eligible to vote.

(3) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any nomination cycle. If a grower produces cherries in more than one district, that grower may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A grower may not participate in the nomination process in one district and the election process in a second district in the same election cycle. A grower's sales constituency is determined by the common marketing organization or brokerage firm or individual representing a group of handlers and growers that purchased the majority of pounds of the grower's fruit in a given year. For the duration of a grower's term on the Board, the sales constituency affiliation for said grower will be the affiliation at the time of their nomination and will be based on the

most recently harvested crop at that time.

(4) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any nomination cycle. If a handler handles cherries in more than one district, that handler may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A handler may not participate in the nominations process in one district and the elections process in a second district in the same election cycle. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower. For the duration of a handler's term on the Board, the sales constituency affiliation for said handler will be the affiliation at the time of nomination.

* * * * *

(7) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 60 days prior to the expiration of such term.

(c) * * *

(3) * * *

(i) * * *

(ii) To be seated as a handler representative in any district, the successful candidate must receive the support of handler(s) that handled a combined total of no less than five percent (5%) of the previous three-year average production handled in the district; Provided, that this paragraph shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(i).

* * * * *

■ 5. Revise § 930.28 to read as follows:

§ 930.28 Alternate members.

(a) An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided,* that such alternate represents the same group (grower or handler) as the member and is not from the same sales constituency as another acting member or acting alternate member in that district. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

(b) Alternate members may be from the same sales constituency as the member for whom they serve as an alternate. In the event a member and his or her alternate are absent from a meeting of the Board, another alternate may act for the member following the requirements of § 930.28(a), provided this does not create a sales constituency conflict with the other members of that district.

(c) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

■ 6. Amend § 930.52 by revising paragraphs (a) and (d) to read as follows:

§ 930.52 Establishment of districts subject to volume regulations.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 5 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 5-year period in which the 6-million-pound average production requirement is exceeded in that district.

* * * * *

(d) Any district producing a crop which is less than 50 percent of the average annual production in that district in the previous 5 years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

* * * * *

■ 7. Amend § 930.62 by revising the introductory text of paragraph (a) to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.41, 930.44, 930.51, 930.53, or 930.55 through 930.57 cherries for designated uses. Such uses may include, but are not limited to:

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Chapter III

RIN 1901–ZA02

Interpretation of Foreign Entity of Concern

AGENCY: Office of Manufacturing and Energy Supply Chains (MESC), U.S. Department of Energy.

ACTION: Notification of proposed interpretive rule; request for comments.

SUMMARY: The U.S. Department of Energy (DOE or the Department) provides this notification of proposed interpretive rule and request for public comment on its interpretation of the statutory definition of ''foreign entity of concern'' (FEOC) in the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL). This statutory definition provides that, among other criteria, a foreign entity is a FEOC if it is ''owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.'' In this document, DOE proposes to clarify the term ''foreign entity of concern'' by providing interpretations of the following key terms: ''government of a foreign country;'' ''foreign entity;'' ''subject to the jurisdiction;'' and ''owned by, controlled by, or subject to the direction of.''

DATES: DOE invites stakeholders to submit written comments on its interpretation. DOE will accept comments, data, and information regarding this interpretation no later than January 3, 2024. Only comments received through one of the methods described in the **ADDRESSES** section will be accepted.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments for RIN 1901–ZA02.

Alternatively, interested persons may submit comments, including comments containing information for which disclosure is restricted by statute, such as trade secrets and commercial or

financial information (hereinafter referred to as Confidential Business Information (CBI)) and appropriately marked as such, by email to *FEOCguidance@hq.doe.gov.* Please include RIN 1901–ZA02 in the subject line of the message. Please submit comments in Microsoft Word, or PDF file format, and avoid the use of encryption.

FOR FURTHER INFORMATION CONTACT: Mallory Clites, U.S. Department of Energy, Office of Manufacturing and Energy Supply Chains at Email: *FEOCguidance@hq.doe.gov,* Telephone: 202–287–1803.

SUPPLEMENTARY INFORMATION:

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A. Background and Purpose

Section 40207 of BIL (42 U.S.C. 18741) provides DOE $6 billion to support domestic battery material processing, manufacturing, and recycling. Section 40207(b)(3)(C) directs DOE to prioritize material processing applicants that will not use battery material supplied by or originating from a ''foreign entity of concern'' (FEOC). Similarly, section 40207(c)(3)(C) directs DOE to prioritize manufacturing applicants who will not use battery material supplied by or originating from a FEOC and prioritize recycling applicants who will not export recovered critical materials to a FEOC. FEOC is defined in BIL section 40207(a)(5). The relevant paragraph lists five grounds upon which a foreign entity is considered a FEOC. Subparagraphs (A), (B), and (D) address entities designated as foreign terrorist organizations by the Secretary of State, included on the Specially Designated Nationals and Blocked Persons List (SDN List) maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC), and alleged by the Attorney General to have been involved in various illegal activities, including espionage and arms exports, for which a conviction was obtained, respectively. Subparagraph (C) states that a foreign entity is a FEOC if it is ''owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in [10 U.S.C. 4872(d)(2)]).'' The ''covered nations'' are the People's Republic of China (PRC), the Russian Federation, the Democratic People's Republic of North Korea, and the Islamic Republic of Iran (10 U.S.C. 4872(d)(2)). BIL section 40207(a)(5) provides no further definition of the term ''foreign entity'' or of the terms used in subparagraph (C).

Subparagraph (E) of BIL section 40207(a)(5) provides an additional means by which an entity may be designated to be a FEOC: a foreign entity is a FEOC if it is ''determined by the Secretary [of Energy], in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.''

In addition to affecting which entities DOE will prioritize as part of its BIL section 40207 Battery Materials Processing and Battery Manufacturing and Recycling Grant Programs, the term is cross-referenced in section 30D of the Internal Revenue Code (IRC) (26 U.S.C. 30D), as amended by the Inflation Reduction Act of 2022 (IRA). Section 30D provides a tax credit for new clean vehicles, including battery electric vehicles. Section 30D(d)(7) excludes from the definition of ''new clean vehicle'' ''(A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in [section 30D(e)(1)(A)]) were extracted, processed, or recycled by a [FEOC] (as defined in section 40207(a)(5) [of BIL] (42 U.S.C. 18741(a)(5))), or (B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in section 30D(e)(2)(A)) were manufactured or assembled by a [FEOC] (as so defined).''

DOE is issuing this proposed guidance regarding which foreign entities qualify as FEOCs as a result of being ''owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.'' DOE considers this proposed guidance to be a proposed interpretive rule for purposes of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) and does not consider this guidance to be a legislative rule subject to the procedural requirements of that section. For the purposes of this document, DOE uses the term ''interpretive rule'' and ''guidance'' interchangeably. Subsequent to the issuance of this interpretive rule, DOE intends to promulgate separate regulations implementing the Secretary's ''determination authority'' contained in BIL section 40207(a)(5)(E) (42 U.S.C. 18741(a)(5)(E)).

In accordance with section 553 of the APA, public notice and opportunity for comment is not required for an interpretive rule. Nevertheless, to get the benefit of input from the public and interested stakeholders, the Department specifically requests comments on its proposed interpretation of the terms discussed herein. This document is intended to solicit public feedback on the DOE interpretation to better understand stakeholder perspectives prior to implementation of finalized guidance. The Department will consider all comments received during the public comment period, and modify its proposed approach, as appropriate, based on public comment.

This proposed guidance proceeds as follows: Section B provides DOE's interpretation of the relevant terms related to whether a foreign entity is a FEOC as the result of being owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation; Section C provides an explanation of DOE's interpretation, along with citations to analogous provisions in other statutory and regulatory contexts that DOE consulted in making its interpretation; and Section D identifies some specific topics on which DOE requests comment from the public.

B. Proposed FEOC Terminology Interpretations

DOE proposes to clarify the term ''foreign entity of concern'' by providing interpretations for the following terms within BIL section 40207(a)(5)(C) (42 U.S.C. 18741(a)(5)(C)): ''government of a foreign country;'' ''foreign entity;'' ''subject to the jurisdiction;'' and ''owned by, controlled by, or subject to the direction of.'' These terms are interpreted separately, recognizing that the terms have unique meaning. DOE also proposes interpretations of additional terms necessary to provide clarity.

For DOE's proposed guidance, an entity is determined to be a FEOC under BIL section 40207(a)(5)(C) if it meets the definition of a ''foreign entity,'' (Section B.I) and either is ''subject to the

jurisdiction'' of a covered nation government (Section B.III) or is ''owned by, controlled by, or subject to the direction of'' (Section B.IV) the ''government of a foreign country'' (Section B.II) that is a covered nation.

I. Foreign Entity

DOE proposes to interpret ''foreign entity'' to mean:

(i) A government of a foreign country;

(ii) A natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in 8 U.S.C. 1324b(a)(3));

(iii) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or

(iv) An entity organized under the laws of the United States that is owned by, controlled by, or subject to the direction (as interpreted in Section IV) of an entity that qualifies as a foreign entity in paragraphs (i)–(iii).

II. Government of a Foreign Country

DOE proposes to interpret ''government of a foreign country'' to mean:

(i) A national or subnational government of a foreign country;

(ii) An agency or instrumentality of a national or subnational government of a foreign country;

(iii) A dominant or ruling political party (*e.g.,* Chinese Communist Party (CCP)) of a foreign country; or

(iv) A current or former senior foreign political figure.

Senior foreign political figure means (a) a senior official, either in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not), or of a dominant or ruling foreign political party, and (b) an immediate family member (spouse, parent, sibling, child, or a spouse's parent and sibling) of any individual described in (a). ''Senior official'' means an individual with substantial authority over policy, operations, or the use of government-owned resources.

III. Subject to the Jurisdiction

DOE proposes that a foreign entity is ''subject to the jurisdiction'' of a covered nation government if:

(i) The foreign entity is incorporated or domiciled in, or has its principal place of business in, a covered nation; or

(ii) With respect to the critical minerals, components, or materials of a given battery, the foreign entity engages in the extraction, processing, or recycling of such critical minerals, the manufacturing or assembly of such components, or the processing of such materials, in a covered nation.

IV. Owned by, Controlled by, or Subject to the Direction

DOE proposes that an entity is ''owned by, controlled by, or subject to the direction'' of another entity (including the government of a foreign country that is a covered nation) if:

(i) 25% or more of the entity's board seats, voting rights, or equity interest are cumulatively held by that other entity, whether directly or indirectly via one or more intermediate entities; or

(ii) With respect to the critical minerals, battery components, or battery materials of a given battery, the entity has entered into a licensing arrangement or other contract with another entity (a contractor) that entitles that other entity to exercise effective control over the extraction, processing, recycling, manufacturing, or assembly (collectively, ''production'') of the critical minerals, battery components, or battery materials that would be attributed to the entity.

Cumulatively held. For the purposes of determining control by a foreign entity (including the government of a foreign country), control is evaluated based on the combined interest in an entity held, directly or indirectly, by all other entities that qualify under the above interpretation of ''foreign entity.'' Additionally, an entity that qualifies as a ''government of a foreign country that is a covered nation'' enters into a formal arrangement to act in concert with another entity or entities that have an interest in the same third-party entity, the cumulative board seats, voting rights, or equity interests of all such entities are combined for the purpose of determining the level of control attributable to each of those entities.

Indirect control. For purposes of determining whether an entity indirectly holds board seats, voting rights, or equity interest in a tiered ownership structure:

- If a ''parent'' entity (including the government of a foreign country) directly holds 50% or more of a ''subsidiary'' entity's board seats, voting rights, or equity interest, then the parent and subsidiary are treated as equivalent in the evaluation of control, as if the subsidiary were an extension of the parent. As such, any holdings of the subsidiary are fully attributed to the parent.
- If a ''parent'' entity directly holds less than 50% of a ''subsidiary'' entity's board seats, voting rights, or equity interest, then indirect ownership is attributed proportionately.

Section C, contains multiple scenarios illustrating how to determine when an entity is indirectly controlled under this interpretive rule.

Effective control means the right of the contractor in the contractual relationship to determine the quantity or timing of production, to determine which entities may purchase or use the output of production, or to restrict access to the site of production to the contractor's own personnel; or the exclusive right to maintain, repair, or operate equipment that is critical to production.

In the case of a contract with a FEOC, a contractual relationship will be deemed to not confer effective control by the FEOC if the applicable agreement(s) reserves expressly to one or more non-FEOC entities all of the following rights:

(i) To determine the quantity of critical mineral, component, or material produced (subject to any overall maximum or minimum quantities agreed to by the parties prior to execution of the contract);

(ii) To determine, within the overall contract term, the timing of production, including when and whether to cease production;

(iii) To use the critical mineral, component, or material for its own purposes or, if the agreement contemplates sales, to sell the critical mineral, component, or material to entities of its choosing;

(iv) To access all areas of the production site continuously and observe all stages of the production process; and

(v) At its election, to independently operate, maintain, and repair all equipment critical to production and to access and use any intellectual property, information, and data critical to production, notwithstanding any export control or other limit on the use of intellectual property imposed by a covered nation subsequent to execution.

C. Explanation of Proposed Interpretation

The term FEOC, as used in both BIL section 40207 and IRC section 30D, is intended to address upstream supply chains of individual entities that may benefit from direct or indirect federal government financial support. As such, the interpretations proposed above are intended to be structured as, to the greatest degree possible, bright-line rules that would allow individual entities to readily evaluate whether their upstream suppliers would or would not be considered FEOCs. In the case of the

Battery Manufacturing and Recycling Grants Program in BIL section 40207, a bright-line rule will afford eligible entities using their grants for battery recycling greater clarity in avoiding the export of recovered critical materials to a FEOC.

I. Foreign Entity

To be considered a FEOC under BIL section 40207(a)(5) (42 U.S.C. 18741(a)(5)), the statute requires that the entity be a ''foreign entity.'' However, section 40207 does not define ''foreign entity.''

The interpretation of ''foreign entity'' in this proposed guidance aligns closely with the definition of ''foreign entity'' contained in the 2021 National Defense Authorization Act (NDAA) (15 U.S.C. 4651(6)), which informs certain Department of Commerce programs related to semiconductors. Both the interpretation proposed in this guidance and the 2021 NDAA definitions define foreign entities to include three main categories of entities: (1) a government of a foreign country and a foreign political party; (2) a natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in 8 U.S.C. 1324b(a)(3) (addressing unfair immigration-related employment practices)); or (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

DOE's interpretation in this proposed guidance specifically provides that entities organized under the laws of the United States that are subject to the ownership, control, or direction of another entity that qualifies as a foreign entity will also qualify as ''foreign entities'' for the purposes of BIL section 40207(a)(5)(C). The 2021 NDAA definition of foreign entity allows for U.S. entities to be considered foreign in this way and also provides an additional list of criteria by which such persons may be considered foreign due to their relationship with the three main categories of foreign entities. While these criteria are relevant for the purposes of the Department of Commerce programs at issue, which are primarily concerned with preventing the transfer of semiconductor technology to covered nation governments, DOE assesses that the criteria are not necessary for the purpose of evaluating covered nation-associated risk to the battery supply chains, because the natural persons and corporate entities that are relevant to the battery supply chain are already encompassed in the identified criteria for ''foreign entity.'' DOE's interpretation ensures that governments of covered nations cannot evade the FEOC restriction simply by establishing a U.S. subsidiary, while otherwise maintaining ownership or control over that subsidiary.

II. Government of a Foreign Country

''Government of a foreign country'' is a term used to determine whether an entity is ''owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country.'' It is also used in the proposed interpretation of ''foreign entity'' in paragraph (i) of Section B.I.

The proposed interpretation of the term ''government of a foreign country'' contained within this notice includes subnational governments, which can have significant ownership or control of firms in the vehicle supply chain. In the covered nations at issue here, there exist many subnational and local government-owned entities, that play a large role in their nation's economies, and local state-owned enterprises (SOEs) are a large driver of regional economies. This term also includes instrumentalities, which include separate legal entities that are organs of a state but where ownership may be unclear, such as a utility or public financial institution. This interpretation aligns with the definition of ''foreign government'' promulgated by the Department of the Treasury in its regulations implementing the Committee on Foreign Investment in the United States (CFIUS) program (31 CFR 800.221). That definition includes ''national and subnational governments, including their respective departments, agencies, and instrumentalities.''

The proposed interpretation of the term ''government of a foreign country'' also includes senior foreign political figures. This inclusion recognizes the reality of government influence over business entities in covered nations, which is often exercised through individuals representing the government on corporate boards or acting at the direction of the government or to advance governmental interests when serving as an equity owner or through voting interests in an otherwise privately held business. This interpretation aligns with the Defense Department's National Industrial Security Program Operating Manual (NISPOM) regulatory definition of ''foreign interest'' (32 CFR 117.3) and associated ''foreign ownership, control or influence'' (FOCI) regulations (32 CFR 117.11), which recognize as FOCI the influence of a representative of a foreign government with the power to direct or decide issues related to a U.S. entity. In addition, in order to deal with the situation in which officials leave their official positions in order to exert the same type of influence on behalf of the government, the interpretation also includes former senior government officials and former senior party leaders. Inclusion of former officials is consistent with regulatory definitions in other contexts. For example, the Bank Secrecy Act (BSA) private banking account regulations (relating to due diligence program requirements for private banking accounts established, maintained, administered, or managed in the United States for foreign persons) administered by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) include both current and former officials in the definition of ''senior foreign political figure'' (31 CFR 1010.605(p)). Those regulations provide further interpretation of the term ''senior official'' that DOE has also included to provide additional clarity.

In the specific context of the CCP in the PRC, DOE considers its interpretation of ''government of a foreign country'' to include current members of Chinese People's Political Consultative Conference and current and former members of the Politburo Standing Committee, the Politburo, the Central Committee, and the National Party Congress because they qualify as ''senior foreign political figures.''

Finally, the inclusion of immediate family members of senior foreign political figures in the interpretation of ''government of a foreign country'' aligns with the BSA private banking regulation. Those regulations include the immediate family members of a senior foreign political figure in their definition of ''senior foreign political figure'' (31 CFR 1010.605(p)(1)(iii)). Immediate family members in those regulations mean spouses, parents, siblings, children, and a spouse's parents and siblings (31 CFR 1010.605(p)(2)(ii)).

III. Subject to the Jurisdiction

If an entity is ''subject to the jurisdiction'' of a government of a foreign country that is a covered nation, the entity is a FEOC. DOE's proposed interpretation provides an objective standard, consistent with the common understanding of ''jurisdiction,'' rather than a subjective standard that relies upon an individual nation's understanding of its own jurisdictional reach. As such, the interpretation first recognizes that any organization formed

under the laws of the government of a covered nation is a national of that nation and therefore subject to its direct legal reach. *Cf.* 28 U.S.C. 1332(c)(1) (noting that, for the purposes of diversity jurisdiction, ''a corporation shall be deemed to be a citizen of every . . . foreign state by which it has been incorporated and of the . . . foreign state where it has its principal place of business'').

Second, DOE's proposal accounts for the fact that several critical segments of the battery supply chain today are predominantly processed and manufactured within covered nation boundaries,[1] and recognizes that a covered nation will be able to exercise legal control (potentially forcing an entity to cease production or cease exports) over an entity with respect to any critical minerals that are physically extracted, processed, or recycled, any battery components that are manufactured or assembled, and any battery materials that are processed within those boundaries, even if the entity is not legally formed under the laws of the covered nation. *See* Third Restatement (Foreign Relations) (1986) section 402(1) (stating that a state has ''jurisdiction to prescribe law with respect to [conduct, persons, and interests] within its territory''). At the same time, DOE's interpretation recognizes that such an entity, which is not legally formed in a covered nation but has production activities *inside* a covered nation, may also have separate production activities that occur *outside* the covered nation. In that case, the covered nation does not have jurisdiction over those outside production activities. Therefore, under the proposed guidance, an entity that is not legally incorporated in a covered nation could be nevertheless considered a FEOC under the jurisdiction prong with respect to the particular critical minerals, battery components, or battery materials that are subject to the jurisdiction of a covered nation. But the entity would not be considered a FEOC with respect to its activities related to other critical minerals, battery components, or battery materials that are not subject to the jurisdiction of a covered nation.

Finally, when an entity is a FEOC due to it being ''subject to the jurisdiction'' of a covered nation, subsidiaries of the FEOC are not automatically considered to also be FEOCs solely based on their parent being a covered nation jurisdictional entity. However, a subsidiary entity would be a FEOC itself if it is also either (1) ''subject to the jurisdiction'' of the covered nation, pursuant to Section B.III, or (2) ''controlled by'' a covered nation government, pursuant to Section B.IV.

DOE's interpretation is supported by statutory and regulatory choices made in similar contexts, including: the 2021 NDAA definition of ''foreign entity'' (15 U.S.C. 4651(6)); and the NISPOM regulatory definition of ''foreign interest'' (32 CFR 117.3). The above interpretation of ''subject to the jurisdiction'' provides clarity to original equipment manufacturers (OEM) that removing FEOCs from their supply chain will require removal of any critical minerals, battery components, and battery materials that are directly produced within the boundary of a covered nation.

IV. Owned by, Controlled by, or Subject to the Direction

If an entity is ''owned by, controlled by, or subject to the direction'' of (hereinafter ''controlled by'') a government of a foreign country that is a covered nation, the entity is a FEOC. The term is also used in paragraph (iv) of the proposed interpretation of foreign entity to account for situations where a U.S. entity is sufficiently controlled to be considered foreign. DOE's proposed interpretation provides for both (1) control via the holding of 25% or more of an entity's board seats, voting rights, or equity interest, and (2) control via license or contract conferring rights on a person that amount to a conferral of control.

Not all foreign entities are considered FEOCs. However, if an entity is a foreign entity that is ''controlled by'' a covered nation government, that entity is a FEOC. A subsidiary of that FEOC is not automatically considered a FEOC itself unless the subsidiary is either (1) ''subject to the jurisdiction'' of a covered nation government, or (2) ''controlled by'' a covered nation government (including via direct or indirect control, such as through joint ventures, or via contracts that confer effective control to a FEOC). As such, a FEOC that is controlled by a covered nation government may hold an interest in a subsidiary, even an interest above 25%, and that subsidiary may still not be a FEOC if the covered nation's level of control of the subsidiary falls below 25% (*see* scenario 3 below).

a. Control via 25% Interest

DOE's interpretation of control is informed by careful analysis of corporate structure within the battery supply chain. In the battery industry, the primary methods by which a parent entity, including a government of a foreign country, exercises control over another entity is through voting interest, equity ownership, and/or boards of directors. Parent entities may exercise control via majority ownership of shares, voting interest, or board seats, and also through minority holdings. Furthermore, parent entities may act in concert with other investors to combine minority holdings to exercise control. As a result, an effective measure of control is one that considers multiple permutations of majority and minority holdings of equity, voting rights, and board seats that can cumulatively confer control.

While there are several prominent companies within the battery supply chain that are majority-owned by covered nation governments, particularly in the upstream mining segment, the predominant form of state ownership and influence in most segments of the battery supply chain is through minority shareholding, voting rights, or board seats. DOE has evaluated a range of supply chain entities for which covered nation governments and officials with cumulative holdings between 25% and 50% have meaningful influence over corporate decision-making, even in cases of subsidiary entities operating in other jurisdictions and in the case of multiple minority shareholders acting in concert. However, DOE's assessment of the battery supply chain strongly suggests that minority control can attenuate with multiple tiers of separation between the state and the firm performing the covered activity.

DOE recognizes that a bright-line metric for control will be necessary to ensure that OEMs can feasibly evaluate the presence of FEOCs within their supply chains. Informed by empirical evidence in the battery supply chain and choices made in other regulatory contexts, discussed further below, DOE's interpretation establishes a 25% threshold and guidance on calculation of the attenuation of control in a tiered ownership structure. In the case of majority control by a covered nation government, that control is not diluted such that outright ownership (50%+) confers full control. This ensures that a government-controlled company that has majority ownership of a subsidiary passes along control. However, multiple layers of minority control by a government may become so attenuated that an entity would no longer be classified as a FEOC. This bright-line threshold and guidance on how to calculate control will enable an evaluation of battery supply chains and facilitate any required reporting or

[1] *100-day-supply-chain-review-report.pdf* (*whitehouse.gov*).

certification of whether that supply chain includes products produced by a FEOC. This same analysis applies to joint ventures, such that if the government of foreign country that is a covered nation controls, either directly or indirectly, 25% or more of a joint venture, then that joint venture is a FEOC.

DOE's interpretation is supported by choices made in a variety of statutory and regulatory regimes and it has devised a method that accounts for the specific circumstances present in the battery industry. DOE takes a broad approach to the interests that count towards the 25% threshold, considering board seats, voting rights, and equity interest. This is consistent with FOCI regulations, which evaluate ownership based on equity ownership interests sufficient to provide ''the power to direct or decide issues affecting the entity's management or operations'' (32 CFR 117.11(a)(1)). The interpretation that the interests of two entities with an agreement to act in concert may be combined to establish a controlling interest is similar to concepts in Securities and Exchange Commission rules defining beneficial ownership in instances of shareholders acting in concert (17 CFR 240.13d–5) and CFIUS regulations that consider arrangements to act in concert to determine, direct, or decide important matters affecting an entity as one means by which two or more entities may establish control over another entity (31 CFR 800.208(a)). Different thresholds of control are used in different statutory and regulatory contexts (*see, for example,* 26 U.S.C. 6038(e)(2), (3) (defining control with respect to a corporation to mean actual or constructive ownership by a person of stock possessing more than 50% of the total combined voting power of all classes of stock entitled to vote or 50% of the total value of shares of all classes of stock of a corporation, and control with respect to a partnership to generally mean actual or constructive ownership of a more than 50% capital or profit interest in a partnership); and 26 U.S.C. 368(c) (defining control with respect to certain corporate transactions to mean the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation)). However, there are a number of analogous regulatory contexts in which a 25% threshold for considering an entity controlled is used. For instance, the Department of Commerce's final rule in Preventing the Improper Use of CHIPS Act Funding, implementing a very similar FEOC provision, uses a 25% threshold with respect to voting interest, board seats, and equity interests (88 FR 65600; Sept. 25, 2023). The State Department, in its International Traffic in Arms Regulation (ITAR) regulations, established a presumption of foreign control where foreign persons own 25% or more of the outstanding voting securities of an entity, unless one U.S. person controls an equal or larger percentage (22 CFR 120.65). FinCEN's BSA private banking account regulations (31 CFR 1010.605(j)(1)(i)) and Beneficial Ownership Reporting Rule (31 CFR 1010.380(d)) also contain 25% ownership thresholds. *See also* 15 CFR 760.1(c) (defining ''controlled in fact'' using a 25% threshold for cases where no other person controls an equal or larger percentage of voting securities). In some of these other contexts, the 25% calculation is based on a particular form of control (*e.g.,* only voting shares). DOE's interpretation broadens the forms of control that are relevant to the 25%, because doing so accords with statutory concerns related to the corporate structure of the battery industry.

DOE's interpretation of indirect control includes guidance on how to calculate the attenuation of control in a tiered ownership structure. In the case of majority control, that control is not attenuated such that outright ownership (50%+) confers full control. The proposed approach recognizes the reality that a parent entity that holds a majority of the voting interest, equity, or board seats in a subsidiary has unilateral control over that subsidiary and can direct that subsidiary's ability to exercise influence and control over its own subsidiaries. However, in the case of multiple tiers of minority control by a government, the actual ability of the government to influence the operations of a subsidiary may become so attenuated that the subsidiary would no longer reasonably be deemed ''controlled'' by the government. This understanding of how to calculate a parent entity's indirect ownership and control of sub-entities is similar to OFAC's 50% Rule, under which ''any entity owned in the aggregate, directly or indirectly, 50% or more by one or more blocked persons is itself considered to be a blocked person.'' *See* U.S. Dept. of the Treasury, Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked (Aug. 13, 2014).

When calculating whether an entity is a FEOC based on whether the government of a covered nation directly or indirectly holds 25% or more of its voting share, equity interest, or board seats, DOE's interpretation would not factor in any voting share, equity interest, or board seats held by an entity that is a FEOC solely by virtue of being subject to the covered nation's jurisdiction.

The following scenarios illustrate indirect control in a tiered ownership structure:

1. If Entity A cumulatively holds 25% of Entity B's board seats, voting rights, or equity interest, then Entity A directly controls Entity B. If Entity B cumulatively holds 50% of Entity C's board seats, voting rights, or equity interest, then Entities B and C are treated as the same entity, and Entity A also indirectly controls Entity C.

○ If Entity A is the government of a foreign country that is a covered nation, Entities B and C are both FEOCs.

2. If Entity A cumulatively holds 50% of Entity B's board seats, voting rights, or equity interest, then Entity A is the direct controlling ''parent'' of Entity B, and Entities A and B are treated as the same entity. If Entity B cumulatively holds 25% of Entity C's board seats, voting rights, or equity interest, then Entity C is understood to be directly controlled by Entity B and indirectly controlled by Entity A.

○ If Entity A is the government of a foreign country that is a covered nation, Entities B and C are both FEOCs.

3. If Entity A cumulatively holds 25% of Entity B's board seats, voting rights, or equity interest, then Entity A directly controls Entity B. If Entity B cumulatively holds 40% of Entity C's board seats, voting rights, or equity interest, then Entity B directly controls Entity C. However, because Entity A does not hold 50% of the board seats, voting rights, or equity interest of Entity B, and Entity B does not hold 50% of the board seats, voting rights, or equity interest of Entity C, Entity A's indirect control of Entity C is calculated proportionately (25% × 40% = 10%). Based on that proportionate calculation, Entity A will be considered to hold only a 10% interest in Entity C, which is insufficient to meet the 25% threshold for control contemplated under this proposed guidance.

○ If Entity A is the government of a foreign country that is a covered nation, Entity B is a FEOC. But Entity A holds only a 10% interest in Entity C, which is less than the 25% threshold requirement to deem Entity C controlled by Entity A. Therefore, Entity C is not a FEOC via the indirect control of Entity A.

b. Control via Licensing and Contracting

DOE is concerned that if ''controlled by'' covered only direct and indirect holding of board seats, voting rights, and equity interest by the governments of covered nations, such governments may seek to evade application of the interpretation by instead controlling FEOCs that contract with non-FEOC entities to be the producer of record while the FEOC maintains effective control over production. Because such arrangements would defeat congressional intent, DOE proposes an interpretation of ''controlled by'' that includes ''effective control'' through contracts or licenses with a FEOC that warrant treating the FEOC as if it were the true entity responsible for any production.

Many contractual and licensing arrangements do not raise these concerns. Therefore, to provide a reasonably bright-line test for evaluation of upstream battery supply chains that include numerous contracts and licenses, DOE has proposed in Section B.IV a safe harbor for evaluation of ''effective control.'' A non-FEOC entity that can demonstrate that it has reserved certain rights to itself or another non-FEOC through contract would not be deemed to be a FEOC solely based on its contractual relationships.

DOE also recognizes that even if an entity's contractual relationship with a FEOC confers effective control over the production of particular critical minerals, battery components, or battery materials, the contracting entity would not necessarily be controlled by the government of a covered nation for critical minerals, battery components, or battery materials that were not produced pursuant to that contract or license. Therefore, under the proposed guidance, an entity could be considered a FEOC with respect to the particular critical minerals, battery components, or battery materials that are effectively produced by the FEOC under a contract or license but not with respect to other critical minerals, battery components, or battery materials that are produced by the entity outside the terms of the contract or license with a FEOC.

The concept that an entity can be controlled via contract is supported by choices made in various regulatory contexts, including CFIUS regulations that include an understanding that control can be established via contractual arrangements to determine, direct, or decide important matters affecting an entity (31 CFR 800.208(a)). Further, intellectual property can be licensed restrictively, or even misused, to give the intellectual property owner rights beyond the typical ability to exclude others from making, using, selling, and/or copying the intellectual property for a limited time. In this scenario, ownership of a facility by an entity that does not have 25% voting interest, equity, or board seats held, directly or indirectly, by the government of a covered nation, would not be sufficient if a FEOC licensor or contractor maintains effective control through other mechanisms. Accordingly, DOE has proposed a definition of effective control that identifies criteria that would indicate that a license or contract provides the licensor or contractor with the ability to make business or operational choices that otherwise would rest with the licensee or principal. The criteria selected reflect various known mechanisms in restrictive or overreaching licenses such as lack of access by the licensee or principal to information and data (*e.g.,* control parameters or specification and quantities of material input for equipment) that are necessary to operate equipment critical to production at necessary quality and throughput levels. This lack of access could be tantamount to the licensor or contractor having effective control over the licensee or principal.

D. Additional Request for Comments

As explained in Section A, DOE requests comment on its proposed interpretations outlined in Section B, as well as the reasoning provided in Section C. Subsequent to the issuance of this interpretive guidance, DOE intends to promulgate separate regulations implementing the Secretary's determination authority contained in BIL section 40207(a)(5)(E). As such, DOE also requests comment on the following.

DOE recognizes that entities could attempt to evade ownership and control restrictions in various ways without materially changing the extent to which they are, in fact, subject to the ownership, control, or direction of a covered nation as defined in this guidance. Section 40207(a)(5)(E) of BIL includes as FEOCs those foreign entities ''determined by the Secretary [of Energy], in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.'' Accordingly, DOE requests comment on whether use of this determination authority could provide a tool for limiting attempts to evade such restrictions and what DOE may deem ''unauthorized conduct.'' DOE requests specific comment on whether, in addition to or instead of defining ''owned by, controlled by, or subject to the direction of'' to include effective control via contractual arrangement, DOE should consider whether a given contractual or licensing arrangement, or operational practice with a contractor or licensor, is a means of evading restrictions on production by a FEOC that would warrant use of its determination authority in BIL section 40207(a)(5)(E). For example, DOE recognizes that even if certain rights are reserved by a non-FEOC licensee in its contractual arrangement with a FEOC, a FEOC licensor may nevertheless compel the licensee through leverage or coercion to not exercise the licensee's contractual rights. DOE could construe any such overt compulsion by a FEOC licensor as unauthorized conduct, potentially subject to the determination authority. DOE requests comment on whether there are any other circumstances related to contractual arrangements between entities and FEOCs that could constitute unauthorized conduct, potentially subject to the determination authority.

In addition, in recognition of the fact that it may be particularly difficult to definitively evaluate the contractual relationships of upstream suppliers, DOE is also considering whether to provide entities with the opportunity to voluntarily request a review of contracts and licensing arrangements by DOE in order to provide additional certainty regarding whether effective control by a FEOC is present. DOE requests comment on whether such a voluntary pre-review process would be beneficial and administrable, including input on what process steps would be reasonable and the types of documents that should be submitted for review.

E. Public Comment Process

Comments submitted can be public or confidential.

Do not submit to *www.regulations.gov* information claimed as CBI. Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, *see* the Confidential Business Information section.

F. Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the

document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email at *FEOCnotice@hq.doe.gov.* DOE will make its own determination about the confidential status of the information and treat it according to its determination.

G. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Notification of proposed interpretive rule; request for comments.

Signing Authority

This document of the Department of Energy was signed on November 28, 2023, by Giulia Siccardo, Director, Office of Manufacturing and Energy Supply Chains, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 28, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–26479 Filed 12–1–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064–AF94

Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of $10 Billion or More; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking and issuance of guidelines; extension of comment period.

SUMMARY: On October 11, 2023, the Federal Deposit Insurance Corporation (FDIC) published in the **Federal Register** a proposal to issue Guidelines to FDIC's standards for safety and soundness regulations and make conforming amendments to its regulations. These Guidelines would apply to all insured state nonmember banks, state-licensed insured branches of foreign banks, and insured state savings associations that are subject to Section 39 of the Federal Deposit Insurance Act (FDI Act), with total consolidated assets of $10 billion or more on or after the effective date of the final Guidelines. The FDIC has determined that an extension of the comment period until February 9, 2024, is appropriate.

DATES: Comments must be received by February 9, 2024.

ADDRESSES: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN 3064–AF94, by any of the following methods:

Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications. Follow instructions for submitting comments on the FDIC's website.

Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF94), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Hand Delivered/Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

Email: comments@FDIC.gov. Include RIN 3064–AF94 in the subject line of the message.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-registerpublications/*. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Risk Management Supervision: Judy E. Gross, Senior Policy Analyst, (202) 898–7047, *JuGross@FDIC.gov*; Legal Division: Jennifer M. Jones, Counsel, (202) 898–6768; Catherine Topping, Counsel, (202) 898–3975; Nicholas A. Simons, Senior Attorney, (202) 898–6785; Kimberly Yeh, Senior Attorney, (202) 898–6514.

SUPPLEMENTARY INFORMATION: On October 11, 2023, the FDIC published in the **Federal Register** a proposal to issue Guidelines as Appendix C to FDIC's standards for safety and soundness regulations in part 364 and make conforming amendments to parts 308 and 364 of its regulations.[1] These Guidelines would apply to all insured state nonmember banks, state-licensed insured branches of foreign banks, and insured state savings associations that are subject to section 39 of the FDI Act with total consolidated assets of $10 billion or more on or after the effective date of the final Guidelines. The Guidelines are intended to set the FDIC's expectations for covered institutions regarding corporate governance, risk management, and oversight by the board of directors. The notice of proposed rulemaking stated that the comment period would close on December 11, 2023. The FDIC has received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to consider the proposal and prepare comments, including to address the questions posed by the FDIC. Therefore, the FDIC is extending the end of the comment period for the proposal from December 11, 2023, to February 9, 2024.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 28, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–26510 Filed 12–1–23; 8:45 am]

BILLING CODE 6714–01–P

[1] 88 FR 70391 (Oct. 11, 2023).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No.: FAA–2023–2270; Notice No. 24–04]

RIN 2120–AL92

25-Hour Cockpit Voice Recorder (CVR) Requirement, New Aircraft Production

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would increase the recording time of cockpit voice recorders from the mandated 2 hours to a proposed 25-hour recording time for all future manufactured aircraft. This rulemaking would provide accident investigators, aircraft operators, and civil aviation authorities with substantially more cockpit voice recorder data to help find the probable causes of incidents and accidents, prevent future incidents and accidents, and make the FAA's regulations more consistent with existing international requirements.

DATES: Send comments on or before February 2, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–2270 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charisse Green, AFS–340, Aircraft Maintenance Division, Office of Safety Standards, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267–1675; email *Charisse.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority.

This rulemaking is issued under the authority described in subtitle VII, part A, subpart III, section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods, and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for aircraft movement and flight crew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

I. Executive Summary

A. Overview of Proposed Rule

This rulemaking effort proposes to amend the cockpit voice recorder (CVR) regulations to increase the recording duration of CVRs. Currently, CVRs are required to retain the last two hours of recorded information. Once this 2-hour limit is reached, a CVR overwrites the oldest data to maintain a rolling 2-hour recording. This proposal would increase the minimum duration of CVR recordings to 25 hours. The proposed change would affect all newly manufactured aircraft operating under title 14 of the Code of Federal Regulations (14 CFR) parts 91, 121, 125, and 135, one year after the effective date of the final rule.

B. Statement of the Problem

The current 2-hour recording duration requirement does not meet the NTSB's needs for investigations and subsequent safety recommendations. Since the NTSB issued Safety Recommendation A–18–030, it has investigated numerous accidents and incidents where CVR data relevant to the accident or incident has been overwritten because the relevant recording occurred earlier than the available two hours of recording.

C. Summary of the Costs and Benefits

Benefits of the proposed rule are expected to stem from a reduction in accident risk and time savings. Specifically, the additional audio of longer duration CVRs would provide authorities with more information on events and procedures undertaken in the flight deck in investigated incidents. This increased data may lead to new or more fully informed FAA recommendations or policy changes that could further enhance safety and reduce the risk that an incident becomes an accident. In addition, updated CVR models have also revamped the CVR interface tools, resulting in time-saving benefits. The simplified and more intuitive tools allow personnel to be trained quicker on operation, retrieve audio data faster, and perform additional diagnostic services to shorten downtime. The FAA currently lacks data to predict the exact reduction in accident risk and labor hours and requests comments on the expected value of these benefits.

The FAA has assessed projected compliance costs using the incremental cost of equipping a 25-hour capable CVR over a comparable 2-hour unit to all applicable newly produced aircraft. Market research indicates that the difference between these units is minimal, ranging from near parity to an upper bound of approximately $4,500. Using that upper bound, the total cost over 20 years is estimated to be $102.42 million at 7 percent present value, with annualized costs of $9.67 million. As operational procedures are expected to be similar between the older 2-hour and newer 25-hour capable models, the FAA anticipates no other notable costs. The FAA invites comments on the cost estimates and assumptions.

II. Background

A. CVRs: National Transportation Safety Board (NTSB) Recommendations and FAA Responses

The FAA previously has engaged in rulemaking to address past NTSB recommendations concerning CVRs.

In December 1996, the NTSB issued Safety Recommendation A–96–171 as a result of its investigation of an accident in January 1996.[1] In this accident, an aircraft touched down hard in the approach light area short of a runway at the Nashville International Airport, resulting in minor injuries to passengers and crew and substantial damage to the aircraft's tail section, nose gear, and engines. During the investigation, the NTSB was hampered by the fact that the 30-minute closed-loop CVR tape did not include recordings of the initial approach to the runway, the hard landing event, or the go-around because that information had been recorded over and permanently lost after the airplane safely stopped on the ground.[2] As a result, the NTSB recommended that the recording limitation for newly manufactured CVRs meet a minimum recording duration of two hours.[3] The FAA adopted this recommendation in 2008.

In August 2002, the NTSB issued a safety recommendation letter to the FAA, identifying delays or failures by the operator to deactivate CVRs after reportable events as a major factor in the systemic problem of retaining data, as information was overwritten in the remainder of a flight with an incident or accident.[4] The NTSB recommended that the FAA require the CVR be deactivated immediately upon completion of flight after a reportable incident or accident has occurred. In response, the FAA issued Notice 8400.48, ''Cockpit Voice Recorder Deactivation After a Reportable Event,'' on April 25, 2003. This notice advised air carriers to add a checklist item to deactivate the CVR, manually or automatically, immediately upon completion of a flight with a reportable accident or incident. On October 6, 2003, the NTSB considered Notice 8400.48 to have met the intent of Safety Recommendation A–02–24 for aircraft operating under parts 121 and 135 requirements, but not part 91 requirements as the notice did not address part 91 operators.[5]

On March 7, 2008, the FAA amended the CVR regulations in accordance with NTSB Safety Recommendation A–96–171.[6] The final rule, ''Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations,'' increased the duration of certain CVR recordings, increased the data recording rate for certain digital flight data recorder (DFDR) parameters, physically separated DFDRs and CVRs, improved power supply to both CVRs and DFDRs, and required certain datalink communications received on an aircraft to be recorded if datalink communication equipment was installed.[7]

On October 10, 2018, the NTSB published an Aviation Safety Recommendation Report titled ''Extended Duration Cockpit Voice Recorders.'' Within this safety report, Safety Recommendation A–18–030 recommended that the FAA require all newly manufactured aircraft that must have a CVR to be fitted with and operate a CVR capable of recording the last 25 hours of audio. This recommendation stemmed from an aircraft incident that occurred in July 2017 at San Francisco International Airport, in which the flight crew of an Airbus A320 was cleared to land on a set runway but instead lined up with a parallel taxiway. After descending to an altitude of 100 feet above ground level (AGL), the aircraft overflew an airplane on the taxiway. The incident aircraft subsequently overflew a second airplane on the taxiway before starting to climb.

During the investigation of the incident, the NTSB found it difficult to gather relevant information as the CVR data was overwritten before Air Canada officials learned of the severity of the event. The report stated that had the NTSB been able to obtain the overwritten data, investigators would have been able to assess the timing and content of the flight crew's conversations during final approach, conversations during and after the go-around, and the flight crew's crew resource management (CRM), workload, and fatigue based on verbalizations or flight deck sounds. In this instance, the NTSB identified several serious safety issues; however, this investigation lacked direct evidence of the flight crew's decision making, coordination, and perception of its environment.

B. FAA Aviation Safety Summit of 2023

On March 15, 2023, the FAA convened an aviation safety summit, where approximately 200 safety leaders from the aviation industry met to discuss safety improvements in response to several recent near-miss incidents and runway incursions.[8] The summit focused on ways to enhance flight safety for commercial operations, the air traffic system, airport and ground operations, and general aviation operations.

As a result of discussions at the summit, the FAA committed to initiate rulemaking that would require CVRs to capture 25 hours of information for newly manufactured aircraft.

C. ICAO and EASA Adoption of a 25-Hour Cockpit Voice Recorder Requirement

In 2013, the European Union Aviation Safety Agency (EASA) proposed an amendment that would have required large commercial aircraft manufactured after January 1, 2019, to carry a CVR capable of recording the last 15 hours of aircraft operation.[9] In 2015, after considering the comments received on the proposed amendment and after technical review, EASA extended the recording duration requirement to 25 hours.[10] The 25-hour mandate took effect on January 1, 2021. The regulation requires any aircraft with a maximum takeoff weight of 27,000 kg (60,000 pounds) or more, manufactured after January 1, 2021, to be equipped with a CVR with at least a 25-hour recording capability.[11]

In 2016, the International Civil Aviation Organization (ICAO) also adopted a new standard calling for the installation of CVRs capable of recording the last 25 hours of aircraft operation on all aircraft manufactured after January 1, 2021, with a maximum certificated takeoff mass of over 27,000 kg and engaged in commercial transport.[12] In adopting this standard, ICAO emphasized the value of CVR recordings in analyzing human factors and other sounds.[13] ICAO noted that extending the recording duration of CVRs was necessary to cover the longest flight duration, including pre- and postflight activities, delays, and the time required to secure the recordings.[14]

Since September 2013, the CVR technical standard in European Organization for Civil Aviation Equipment (EUROCAE) ED–112A, ''Minimum Operational Performance Specification for Crash Protected Airborne Recorder Systems,'' used by all

[1] NTSB. Safety Recommendation A–96–171, December 11, 1996.

[2] *Id.*

[3] *Id.*

[4] NTSB. Safety Recommendation A–02–24, August 29, 2002.

[5] NTSB. Safety Recommendation Report A–18–04 at 3, October 2, 2018.

[6] 73 FR 12541 (2008).

[7] *Id.*

[8] The FAA. Readout from the FAA Aviation Safety Summit Breakout Panels. March 15, 2023. Accessed from *www.faa.gov/newsroom/readout-faa-aviation-safety-summit-breakout-panels.*

[9] ''Amendment of requirements for flight recorders and underwater locating devices,'' Notice of Proposed Amendment 2013–26, European Union Aviation Safety Agency, December 20, 2013.

[10] Commission Regulation 2015/2338, 2015 O.J. Amending Regulation (EU) No 965/2012 as regards requirements for flight recorders, underwater locating devices and aircraft tracking systems.

[11] *Id.*

[12] NTSB. Aviation Safety Recommendation Report. ASR–18–04 at 2. October 2, 2018.

[13] *Id.*

[14] *Id.*

manufacturers,[15] already provides design standards for a 25-hour CVR.[16]

III. Discussion of the Proposal

Since the FAA updated the CVR regulations in 2008, the NTSB has reported issues with accessing relevant CVR data with existing 2-hour recording duration. Numerous aircraft incidents have occurred in which relevant CVR data was overwritten and thereby made unavailable because of the time it took to retrieve the CVR. The lack of relevant CVR data hampers NTSB investigations and its ability to provide appropriate safety recommendations that can help prevent future accidents and incidents.[17]

In response to Safety Recommendation A–18–030, the FAA proposes to amend all CVR operational regulations related to CVR recording time by expanding the recording duration from two hours to 25 hours for aircraft manufactured one year after the date of publication of the final rule.

The NTSB's Safety Recommendation also included the recommendation to retrofit the current fleet. While retrofitting the current fleet would more expeditiously increase the number of aircraft fitted with the newer 25-hour CVR units and, thereby, the projected benefits to safety, the costs would be significant. Specifically, retrofitting the current fleet would increase by two-thirds the number of aircraft required to install 25-hour CVRs (estimated 29,561 aircraft in the current fleet added to the estimated 43,470 aircraft being built in the next 20 years). Further, the cost to retrofit existing aircraft with 25-hour CVRs would be several times higher than the cost to equip future-built aircraft with a 25-hour CVR instead of a 2-hour model. Assuming no replacement, applying a $25,000 CVR unit cost spread across the estimated 29,651 current fleet would result in roughly $741.28 million (undiscounted) in equipment cost compared to the $195.62 million (undiscounted) in incremental upgrade costs from the proposed rule. Retrofitting current aircraft would also incur additional costs, such as aircraft downtime and labor hours required to replace the CVR unit, which would further increase the total cost. Therefore, in an effort to provide the increased benefit of making more substantive data available to accident investigators while maintaining the lowest economic impact on operators, this proposed rule would apply to newly manufactured aircraft only. For more information, please see the regulatory impact analysis in the docket.

The proposed change would affect the following regulations:

- Section 91.609(i)(2);
- Section 121.359(i)(2);
- Section 121.359(j)(2);
- Section 125.227(g)(2);
- Section 125.227(h)(2);
- Section 135.151(g)(1)(iii); and
- Section 135.151(g)(2)(iii).

Certificate holders operating under part 129 requirements would be affected because, in accordance with § 129.24, their CVRs are required to record as if the aircraft were operated under parts 121, 125, or 135.

A. Cockpit Voice Recorder Capabilities and Investigative Use

Aircraft operating under parts 91, 121, 125, and 135 are required to be equipped with a CVR that records radio transmissions and sounds in the flight deck to aid subsequent investigation should an accident or incident occur. The recorder's flight deck area microphone is usually located on the overhead instrument panel between the two pilots.

CVRs preserve the recent history of sounds in the flight deck and provide unique information such as engine noise, stall warnings, landing gear extension and retraction, and other clicks and pops. These sounds may help an investigator to determine parameters such as engine rpm, system failures, speed, and the time at which certain events occur. The CVR also records communications with Air Traffic Control, automated radio weather briefings, conversations between the pilots and ground or cabin crew, flight crew verbalizations of intentions and coordination, as well as the pilots' awareness of the aircraft and flight deck information.[18] Access to this information allows investigators to more thoroughly investigate accident and incident factors. Incident factors include the flight crew's procedural compliance, distraction, decision-making, workload, fatigue, and situational awareness.

A CVR starts recording when an aircraft is powered up and will continue to record until the aircraft is powered down or the CVR is deactivated. Once a CVR reaches the end of its recording limit, it will overwrite existing data with a new recording.

CVRs typically deactivate due to two forms of power loss. The first occurs when the CVR is deactivated after a major or catastrophic event causing a loss of electrical power. When this event occurs, the CVR preserves relevant audio recorded in the two hours prior to the accident. The second form occurs during less severe incidents, such as when the flight crew manually deactivates the CVR immediately upon landing in order to prevent the relevant audio from being overwritten.

After an accident or incident, the CVR data is transferred to an NTSB lab for retrieval. The NTSB will eventually receive a readout from the CVR software.

Since CVRs were implemented in 1966, recording capabilities have significantly increased from the original 30 minutes. The latest designs employ more easily expandable solid-state memory and use fault tolerant digital recording technique with an incorporated battery so that recording can continue until the end of flight, even when the aircraft's electrical system fails.

The technical limit for recording time has expanded such that 25 hours is now well within CVR capability. In addition, because both EASA and ICAO have adopted a 25-hour CVR recording duration minimum for aircraft manufactured after January 1, 2021, multiple manufacturers already produce CVRs capable of recording for 25 hours.

B. National Transportation Safety Board

Since 2008, the NTSB has expressed concerns regarding the availability of CVR information, the length of CVR recording time, and how to prevent relevant information from being overwritten after an incident or accident. The current 2-hour recording requirement has not fully resolved the issue of overwritten data, which continues to negatively impact NTSB investigations.

There are two common causes for CVR data to be overwritten. First, there may be a delay between a safety event and the flight crew recognizing that event to be a serious incident or accident, resulting in the relevant CVR data being overwritten as the CVR continued to record throughout the delay. Second, the recording of a safety event may be overwritten during the course of the flight itself (*e.g.,* where flight duration exceeds the 2-hour CVR recording duration).

[15] All manufacturers, regardless of US-based or foreign, are required to use this standard in order to meet the carriage requirements in §§ 91.609, 121.359, 125.227, and 135.151, which reference TSO–C123, which in turn specifies ED–112A.

[16] GlobalSpec. ''EUROCAE ED 112.'' Accessible at *standards.globalspec.com/std/1629860/EUROCAE%20ED%20112.*

[17] NTSB. (March 15, 2023). Transcript of NTSB Chair's Remarks at the FAA Safety Summit. *www.ntsb.gov/Advocacy/Activities/Pages/Homendy-20230315.aspx.*

[18] NTSB. (2023) ''Cockpit Voice Recorders (CVR) and Flight Data Recorders (FDR).'' *www.ntsb.gov/news/Pages/cvr_fdr.aspx.*

The NTSB reported that, in 2017, approximately 56 percent of U.S. block times [19] consisted of long and medium flights with durations longer than two hours, including some international flights lasting over 12 hours.[20] When ICAO adopted the standard for the installation of 25-hour CVRs in 2016, it noted that extended duration of CVRs is necessary to cover the longest duration of flights, including pre- and postflight activities, delays, and the time required to secure the recordings.[21]

Since the 2-hour standard came into effect in 2008, numerous accidents and incidents have occurred where the CVR data was overwritten and, had it been available, would have positively contributed to NTSB investigations. Notable incidents include the following:

TABLE 1—SAFETY EVENTS FOR WHICH PERTINENT CVR DATA WERE OVERWRITTEN

[Up to 2018]

Date	Event type	NTSB No.	Location	Event description
6/21/2018	Incident	OPS18IA015	Chicago, IL	Runway excursion.
4/18/2018	Accident	DCA18LA163	Atlanta, GA	Engine fire.
7/07/2017	Incident	DCA17IA148	San Francisco, CA	Taxiway line-up and overflight of 4 air carrier airplanes by an Airbus A320 (46-hour notification delay).
5/09/2014	Accident	CEN14LA239	Columbus, OH	Ground engine fire.
9/12/2013	Incident	CEN13IA563	Austin, TX	Loss of pitch control during takeoff (4-day notification delay).
7/31/2012	Incident	CEN12IA502	Denver, CO	Bird strike.
12/1/2011	Accident	WPR12LA053	Oakland, CA	Enroute turbulence.
6/21/2011	Incident	ENG11IA035	Atlanta, GA	Engine fire.
2/09/2011	Incident	ENG11IA016	Minneapolis, MN	Tailpipe fire following push back.
11/23/2010	Accident	WPR11LA058	Salt Lake City, UT	On ground collision with tow tractor.
6/28/2010	Accident	CEN10LA363	Pioneer, LA	En route turbulence.
12/31/2009	Incident	DCA10IA015	Charlotte, NC	Wing tip strike during landing.
6/29/2007	Incident	LAX07IA198	Los Angeles, CA	Blown tires on takeoff.
3/21/2006	Incident	DEN06IA051	Denver, CO	Tail strike on landing.
10/16/2003	Accident	MIA04LA004	Tampa, FL	Taxiway excursion.
6/03/2002	Accident	DCA02MA039	Subic Bay, Philippines	Abrupt maneuver due to ground proximity warning system alert and elevator damage.
6/02/2002	Accident	DCA02MA042	Subic Bay, Philippines	Flight control malfunction during approach.

In addition to the incidents noted by the NTSB, CVR data overwrites have hampered several other investigations. For example, on October 21, 2009, an incident occurred on a 4-hour flight where the flight crew did not communicate with air traffic control for about 1 hour and 17 minutes, during which time the airplane overflew its intended location at a cruise altitude of 27,000 ft.[22] The flight crew later reported that ''cockpit distractions'' led to the event. The airplane's CVR had a 30-minute recording duration; upon review, the NTSB discovered that all pertinent information had been overwritten by the remaining two hours and 11 minutes of the 4-hour flight.[23] Even if the airplane had been equipped with a CVR recording for two hours, the information still would have been overwritten. Having lost this CVR data to overwriting, the NTSB was unable to determine the nature of the flight crew's distraction, the events that led to the distraction, why the distraction lasted for as long as it did, and what mitigating procedures or actions could have prevented that distraction.

More recently, on January 13, 2023, a runway incursion incident occurred at John F. Kennedy (JFK) Airport in New York, New York. The incursion involved a taxiing Boeing 777–200 and a Boeing 737–900ER cleared for takeoff. The Boeing 777–200 accessed a taxiway without Air Traffic Control (ATC) clearance, crossing the runway that the Boeing 737–900ER was utilizing for takeoff. ATC was notified of the potential conflict, cancelled the Boeing 737–900ER's takeoff clearance, and the flight crew aborted the flight. Because the incident did not result in any damage or injuries, the two flights eventually took off to their respective destinations. During its investigation, the NTSB discovered the CVR data for both flights had been overwritten.

On February 4, 2023, a runway incursion occurred at Austin Bergstrom International Airport (AUS) when a Boeing 767F freighter attempted to land on a runway from which a Boeing 737–700 was also cleared to depart.[24] Due to poor weather conditions, the Boeing 767F crew did not see the conflict until late in the approach, and the two planes came close to colliding; specifically, the Boeing 767F needed to overfly the Boeing 737–700 to avoid a collision. There were no injuries reported to the 128 passengers and crew onboard the Boeing 737–700 or to the 3 crew members onboard the Boeing 767F. During its investigation, the NTSB discovered the CVR data for both flights had been overwritten.

The FAA had sought to prevent such recording issues by creating the retention requirements found in §§ 91.609(g), 121.343(i), and 135.152(e), where an operator must remove the recording media following an accident or incident and keep the recorded data for at least 60 days, or longer if necessary. The FAA also provided guidance in Advisory Circular 20–186, ''Airworthiness and Operational Approval of Cockpit Voice Recorder Systems,'' [25] which recommended the operator to address CVR recording retention after an accident or incident in its maintenance and operational programs, such as inclusion in a flight crew checklist, or in the company standard operating procedures or emergency procedures. However, since recording issues continue to occur, the

[19] ICAO defines block time to include the moment an aircraft is pushed back from the gate to the moment it comes to a final stop at a gate or parking stand after landing.

[20] NTSB. Aviation Safety Recommendation Report. ASR–18–04 at 5. October 2, 2018.

[21] *Id.* NTSB Report, citing ''Minimum Operational Performance Specification for Crash Protected Airborne Recorder Systems,'' ED–112A, European Organization for Civil Aviation Equipment.

[22] *Id.* at 4.

[23] *Id.*

[24] NTSB. Aviation Investigation Preliminary Report No. DCA23LA149. Feb. 4, 2023.

[25] Advisory Circular 20–186, Paragraph 3.2.4. July 22, 2016. *www.faa.gov/documentLibrary/media/Advisory_Circular/AC_20-186.pdf.*

FAA agrees with the NTSB that an extension to the CVR recording duration requirement to 25 hours is warranted.

C. Privacy Concerns

The FAA acknowledges that pilot-focused organizations may have concerns regarding how the NTSB or the FAA would use the CVR data collected for investigative purposes.

This issue previously arose when the FAA increased the CVR recording duration from 30 minutes to 2 hours. At that time, the FAA determined that the investigative need and benefit of this information outweighed these privacy concerns.[26] The FAA maintains this stance. The proposed increase to a 25-hour CVR recording duration would further improve current investigative capabilities. It would also provide investigating bodies, such as the NTSB, with more complete context surrounding the accidents and incidents under investigation and support their safety analyses.

Importantly, this proposed increase is designed to provide more context for any flight deck activity that might be pertinent to an investigation. Specifically, this increase expands the possible range of data available to investigators. This proposal does not alter or modify the existing processes for requesting or use of this data. Sections 91.609(g), 121.359(h), 121.227(f), and 135.151(c) specify that the information obtained from the CVR recording is to be used for investigation purposes and that the FAA will not use the CVR record in any civil penalty or certificate action. This proposal does not modify these regulations.

D. International Requirements

ICAO and EASA both require the carriage of CVRs with 25-hour recording duration on airplanes with a maximum certificated takeoff mass of more than 27,000 kg. These are aircraft that have the capability to fly transatlantic or international flights, *i.e.,* long-haul flights that can last ten or more hours. In contrast, the FAA requirement would apply to all newly manufactured aircraft required to carry a CVR, based on existing operating rules. This distinction reflects differences between the FAA and ICAO/EASA regulatory schemes: the FAA's existing regulatory scheme differentiates aircraft by operation type, not by weight. This rulemaking would not change that regulatory scheme.

With both EASA and ICAO amending their CVR rules to require 25 hours of audio recording time, this proposed change also presents an opportunity to ensure U.S. regulations are consistent in intent with international authorities. This should lead to a reduction of risk for some operators who would otherwise face conflicting requirements and the cumbersome task of ascertaining guidance for the appropriate authorities in an attempt to satisfy differing regulations. Historically, the FAA has implemented CVR regulations by operation unlike ICAO and EASA, which put forth their standards and regulations by aircraft weight. As a result, the FAA's proposal would encompass more aircraft than international requirements would because newly manufactured aircraft with less than a maximum takeoff weight of 27,000 kg would be affected.

E. Conclusion and Compliance

The FAA concurs with the NTSB's recommendation and believes that extending CVR recording duration to 25 hours would increase aviation safety by providing investigative bodies with more thorough context and background surrounding accidents and incidents. This proposal would also make FAA regulations more consistent with ICAO recommendations and EASA requirements.

Given that the technology already exists to implement this proposal, the FAA proposes a compliance deadline for newly manufactured aircraft of one year after the effective date of the final regulation. Any aircraft with a newly issued airworthiness certificate dated on or after that compliance date would be required to be equipped with a CVR with 25-hour recording duration.

In addition, the FAA will update the version of the technical standard order (TSO) referenced in the regulatory text from TSO–C123a to the latest version, TSO–C123c, for newly manufactured aircraft.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of Executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule: will result in benefits that justify costs; is not an economically ''significant regulatory action'' as defined in section 3(f)(1) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Summary of the Regulatory Impact Analysis

Benefits for the proposed rule were assessed qualitatively as the FAA currently lacks data to make projections on the benefit totals. The primary expected benefit is changes in safety from a potential reduction in accident risk. The expanded available audio from this proposed rule would provide authorities with more information on events and procedures undertaken in the flight deck in investigated incidents. This increased data may lead to new FAA recommendations or policy changes that could further enhance safety and reduce the risk that a future incident becomes an accident. The reduction in the risk of one fatality generates benefits equal to the value of statistical life (VSL), approximately $12.5 million in 2022 according to the Department of Transportation (DOT).[27] Given the annualized costs of $9.67 million from this proposed rule,

[26] Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations. 73 FR 12541, 12544 (March 7, 2008).

[27] DOT. Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses. Office of the Secretary of Transportation. 2022.

reducing the risk of a single fatality in any year due to effective safety measures resulting from the ability to gather additional CVR data would generate benefits greater than the expected costs.

Additionally, there are some potential time-saving benefits associated with the updated CVR model deployment. In updating their CVR models, manufacturers also have revamped the CVR interface tools. These simplified and more intuitive tools allow personnel to be trained quicker on operation, retrieve audio data faster, and perform additional diagnostic services to shorten downtime. The FAA does not currently have enough data to predict the value of these benefits and invites public comments on the expected totals.

The FAA assessed the costs for the proposed rule as the incremental cost increase of equipping a 25-hour capable CVR instead of a comparable 2-hour unit to all applicable new aircraft being produced. The total aircraft that will be built and equipped with the 25-hour CVR includes projected new aircraft needed to handle future demand increases as well as estimated replacements for the current fleet. Market research indicates the cost increase between comparable 2 and 25-hour CVRs to be minimal, ranging from near parity to an upper bound of approximately $4,500. Using that upper bound as the incremental cost to equip all applicable projected new aircraft with a 25-hour capable CVR, the estimated highest total cost over 20 years, at seven percent present value, is $102.42 million with an annualized cost of $9.67 million (table 2). At three percent present value, the total cost is $144.77 million with an annualized cost of $9.73 million.

TABLE 2—SUMMARY OF COSTS OVER 20 YEARS

[Millions of 2021$]

14 CFR operational part	7% Present value		3% Present value	
	Annualized costs	Total costs	Annualized costs	Total costs
Part 91 [1]	$3.55	$37.57	$3.56	$52.98
Part 121	3.18	33.66	3.19	47.41
Part 125	0.16	1.65	0.16	2.32
Part 135	2.79	29.55	2.83	42.06
Total [2]	9.67	102.42	9.73	144.77

[1] Consists of Part 91 turbine powered and Part 91K aircraft.
[2] Total reflects combined costs of each CFR part.
Note: Columns may not sum to total due to rounding.

The FAA does not anticipate other costs besides the incremental costs of forward fitting 25-hour capable CVRs to comply with the proposed rule. Based on the technical standards for CVRs, market research indicates that 25-hour models tend to match the older 2-hour variants in a manner that allows them to be swapped without much difficulty. This compatibility implies that other operational procedures and costs should be similar and not result in notable change. The FAA invites comments on the expected costs for this proposed rule.

Please see the RIA available in the docket for more details.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The proposed rule affects CVR manufacturers by requiring the development and certification of 25-hour capable models. A major change to the CVR components, such as in this case, would require a manufacturer to go through the development and certification of a new model, which could involve extra cost and time. However, due to EASA and ICAO standards for 25-hour capability taking effect in 2021, market research shows that manufacturers already have developed 25-hour compliant variants that meet FAA TSO–C123 compliance. Therefore, the proposed regulation is not expected to result in new or significant impacts on CVR manufacturers. The FAA invites comments on the expected effects of the proposed rule on CVR manufacturers.

As described in the RIA, the FAA identified six U.S. manufacturers that would be affected by the proposed rule. Based on the Small Business Administration (SBA) 2023 size standard for Other Aircraft Part and Auxiliary Equipment Manufacturing (NAICS 336413),[28] and on publicly available data on employment for these entities, all six identified manufacturers are large businesses that exceed the 1,250-employee size maximum for a small business. Therefore, the FAA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule does not impact any small entity. The FAA welcomes comments on the number of U.S. CVR manufacturers and this certification.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a

[28] Small Business Administration (SBA) Size Standards, effective March 17, 2023, can be found at *www.sba.gov/document/support-table-size-standards.*

legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it promotes the safety of the American public and does not exclude imports that meet the recording length requirement. As a result, the FAA does not consider this proposed rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product.

The FAA determined that the proposed rule will not result in the expenditure of $177 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0700. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Summary: This notice proposes to amend parts 91, 121, 125, and 135 requirements so aircraft manufactured on or after [ONE YEAR THE EFFECTIVE DATE OF THE FINAL RULE] that are required to be installed with a cockpit voice recorder would be required to have a recording limit of 25 hours, expanded from the current requirement of 2 hours.

Use: Such a record would provide additional information to accident and incident investigators to determine flight crew's procedural compliance, distraction, decision-making, workload, fatigue, and situational awareness. The expansion to 25 hours would address the issue in which data is overwritten because the relevant recording occurred earlier than the available two hours of recording.

Respondents (including number of): The respondents all would be certificate holders operating the above-referenced U.S.-registered aircraft under parts 91, 121, 125, 129, and 135. Certificate holders operating under part 129 requirements would be affected because, in accordance with § 129.24, a cockpit voice recorder would be required to record as if the aircraft were operated under parts 121, 125, or 135.

Frequency: The 25 hours of recorded data would be overwritten on a continuing basis and would only be accessed following an accident or incident.

Annual Burden Estimate: This proposed requirement would not change the current information collection activity; therefore, it does not contain a measurable hour burden.

The FAA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the FAA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAA's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by February 2, 2024. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. The proposed rule would harmonize with ICAO regarding the required length of the CVR recordings at 25 hours. However, the U.S. does not regulate carriage requirements of CVRs based on the aircraft gross weight, as do the ICAO and EASA, and the proposed rule change would not change this. If this proposal is adopted, the FAA intends to amend its currently filed difference on this topic with ICAO.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this proposed action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, would not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[29] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[30] the FAA ensures that Federally Recognized

[29] 65 FR 67249 (Nov. 6, 2000).

[30] The FAA. (Jan. 28, 2004). *FAA Order No. 1210.20. www.faa.gov/documentLibrary/media/1210.pdf.*

Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it would not be a ''significant energy action'' under the Executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this proposed action under the policies and agency responsibilities of E.O. 13609 and has determined that this proposed action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.609 by revising paragraph (i)(2) to read as follows:

§ 91.609 Flight data recorders and cockpit voice recorders.

* * * * *

(i) * * *

(2) Retains at least—

(i) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(ii) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE

OF THE FINAL RULE,] the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note); Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44701 note).

■ 4. Amend § 121.359 by revising paragraphs (i)(2) and (j)(2) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(i) * * *

(2) Retains at least—

(i) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(ii) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision; and

* * * * *

(j) * * *

(2) Retains at least—

(i) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(ii) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision; and

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRCRAFT HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 6. Amend § 125.227 by revising paragraphs (g)(2) and (h)(2) to read as follows:

§ 125.227 Cockpit voice recorders.

* * * * *

(g) * * *

(2) Retains at least—

(i) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(ii) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision; and

* * * * *

(h) * * *

(2) Retains at least—

(i) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(ii) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision; and

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 7. The authority citation for part 135 continue to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 8. Amend § 135.151 by revising paragraphs (g)(1)(iii) and (g)(2)(iii) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(g) * * *

(1) * * *

(iii) Retains at least—

(A) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(B) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision.

* * * * *

(2) * * *

(iii) Retains at least—

(A) The last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; or

(B) If manufactured on or after [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC.

Lawrence Fields,

Acting Executive Director, Flight Standards Service.

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BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118492–23]

RIN 1545–BQ99

Section 30D Excluded Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding the excluded entity provisions with respect to the clean vehicle credit as amended by the Inflation Reduction Act of 2022. The proposed regulations would also provide clarity on definitions with respect to new clean vehicles eligible for the clean vehicle credit. The proposed regulations would affect qualified manufacturers of new clean vehicles and taxpayers who purchase and place in service new clean vehicles.

DATES: Written or electronic comments and requests for a public hearing must be received by January 18, 2024. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–118492–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The

Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–118492–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202) 317–6901 (not a toll-free number) or send an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended section 30D of the Internal Revenue Code (Code). Section 30D provides a credit (section 30D credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to each new clean vehicle that a taxpayer purchases and places in service. The section 30D credit is determined and allowable with respect to the taxable year in which the taxpayer places the new clean vehicle in service.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 30D. These proposed regulations supplement a notice of proposed rulemaking (REG–120080–22) published in the **Federal Register** (88 FR 23370) on April 17, 2023 (April 2023 proposed regulations) that contains initial proposed regulations under section 30D as amended by the IRA, as well as a notice of proposed rulemaking (REG–113064–23) published in the **Federal Register** (88 FR 70310) on October 10, 2023 (October 2023 proposed regulations) that contains initial and additional proposed regulations under sections 25E, 30D, and 6213 of the Code. This notice of proposed rulemaking does not address written comments that were submitted in response to the April 2023 proposed regulations or the October 2023 proposed regulations. Any comments received in response to this notice of proposed rulemaking will be addressed in the Treasury Decision adopting these regulations as final regulations.

II. Section 30D

Section 30D was enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of the IRA. In general, the amendments made by section 13401 of the IRA to section 30D apply to vehicles placed in service after December 31, 2022, except as provided in section 13401(k)(2) through (5) of the IRA.

Effective beginning on April 18, 2023, section 30D(b) provides a maximum credit of $7,500 per new clean vehicle, consisting of $3,750 if certain critical minerals requirements are met and $3,750 if certain battery components requirements are met. These requirements are described in section 30D(e)(1) and (2), respectively, and the preamble to the April 2023 proposed regulations.

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, under section 30D(c)(2), the section 30D credit is treated as a nonrefundable personal credit allowable under subpart A of part IV of subchapter A of chapter 1. However, under section 30D(c)(1), so much of the credit that would be allowed under section 30D(a) that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year general business credit under section 38(b) and not allowed under section 30D(a). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

The IRA amended section 30D(d) regarding the definition of a new clean vehicle. Section 30D(d)(1) defines ''new clean vehicle'' as a motor vehicle that satisfies the following eight requirements set forth in section 30D(d)(1)(A) through (H) of the Code:

- the original use of the motor vehicle must commence with the taxpayer;
- the motor vehicle must be acquired for use or lease by the taxpayer and not for resale;
- the motor vehicle must be made by a qualified manufacturer;
- the motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act;
- the motor vehicle must have a gross vehicle weight rating of less than 14,000 pounds;
- the motor vehicle must be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 7 kilowatt hours, and is capable of being recharged from an external source of electricity;
- the final assembly of the motor vehicle must occur within North America; and
- the person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary of the Treasury or her delegate (Secretary) containing certain specifically enumerated items.

Section 30D(d)(3) defines ''qualified manufacturer'' as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*)) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

Section 30D(d)(7) excludes from the definition of ''new clean vehicle'' any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern (as so defined).

No section 30D credit is allowed with respect to a vehicle placed in service after December 31, 2032.

III. Prior Guidance

A. Notice 2022–46

On October 5, 2022, the Treasury Department and the IRS published Notice 2022–46, 2022–43 I.R.B. 302. The notice requested general comments on issues arising under sections 25E and 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals and battery components; (3) foreign entities of concern; (4) recordkeeping and reporting; (5) eligible entities; (6) elections to transfer and

advance payments; and (7) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters' interest and engagement on these issues. These comments have been carefully considered in the preparation of the proposed regulations.

B. Revenue Procedure 2022–42

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022–42, 2022–52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W, and to report certain information regarding vehicles produced by such manufacturers that may be eligible for credits under these sections. In addition, Revenue Procedure 2022–42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

C. April 2023 Proposed Regulations

On April 17, 2023, the Treasury Department and the IRS published the April 2023 proposed regulations in the **Federal Register**, which provides proposed definitions for certain terms related to section 30D; proposed rules regarding personal and business use and other special rules; and additional proposed rules related to the critical mineral and battery component requirements.

D. Revenue Procedure 2023–33

On October 6, 2023, the Treasury Department and the IRS released Revenue Procedure 2023–33, which was published on October 23, 2023, in Internal Revenue Bulletin 2023–43, to provide guidance for taxpayers electing to transfer credits under section 25E or 30D and for eligible entities receiving advance payments of credits under sections 30D and 25E. This revenue procedure sets forth the procedures under sections 30D(g) and 25E(f) for the transfer of the previously-owned clean vehicle credit and the new clean vehicle credit from the taxpayer to an eligible entity, including the procedures for dealer registration with the IRS, the procedures for the revocation and suspension of that registration, and the establishment of an advance payment program to eligible entities. In addition, this revenue procedure superseded sections 5.01 and 6.03 of Revenue Procedure 2022–42, providing new information for the time and manner of submission of seller reports, respectively. This revenue procedure also superseded sections 6.01 and 6.02 of Revenue Procedure 2022–42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

E. October 2023 Proposed Regulations

On October 10, 2023, the Treasury Department and the IRS published the October 2023 proposed regulations in the **Federal Register**, which provide guidance for elections to transfer clean vehicle credits under sections 30D(g) and 25E(f). The proposed regulations provide guidance for taxpayers intending to transfer the previously-owned clean vehicle credit and the new clean vehicle credit to dealers who are entities eligible to receive advance payments of either credit. The proposed regulations also provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or clean vehicle credits. The proposed regulations also provide guidance for recapturing the credit under sections 30D and 25E. Finally, proposed § 1.6213–2 defines the term ''omission of a correct vehicle identification number'' (VIN) for purposes of section 6213, under which, in part, the IRS is authorized to make a summary assessment when there has been an omission of a correct VIN on a taxpayer's return when claiming or electing to transfer a credit under section 25E or 30D.

IV. Department of Energy Guidance

Concurrently with the release of these proposed regulations, the Department of Energy (DOE) is releasing proposed guidance in the **Federal Register**, which provides proposed interpretations of certain terms used in the definition of ''foreign entity of concern'' (FEOC) set forth in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (IIJA), 42 U.S.C. 18741(a)(5), and as cross-referenced in section 30D(d)(7). Section 40207(a)(5) of the IIJA defines FEOC to include foreign entities covered by specific designations, inclusions, and allegations by Federal agencies as described in section 40207(a)(5)(A), (B), and (D), as well as foreign entities ''owned by, controlled by, or subject to the jurisdiction or direction of a government'' of a covered nation under section 40207(a)(5)(C). Covered nations are defined in 10 U.S.C. 4872(d)(2) as the People's Republic of China, the Russian Federation, the Democratic People's Republic of Korea, and the Islamic Republic of Iran as of the date of publication of these proposed regulations. Finally, section 40207(a)(5)(E) of the IIJA provides that a FEOC includes a foreign entity that the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, determines is engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

The DOE proposed guidance provides an interpretation of section 40207(a)(5)(C) of the IIJA. In particular, the DOE proposed guidance provides definitions for the terms ''government of a foreign country,'' ''foreign entity,'' ''subject to the jurisdiction,'' and ''owned by, controlled by, or subject to the direction of.''. In general, an entity incorporated in, headquartered in, or performing the relevant activities in a covered nation would be classified as a FEOC. For purposes of these rules, an entity would be ''owned by, controlled by, or subject to the direction'' of another entity if 25 percent or more of the entity's board seats, voting rights, or equity interest are cumulatively held by such other entity. In addition, licensing agreements or other contractual agreements may also create control. Finally, ''government of a foreign country'' would be defined to include subnational governments and certain current or former senior foreign political figures.

Explanation of Provisions

I. Section 1.30D–2 Definitions

Proposed § 1.30D–2(a) is revised to clarify that all definitions in the section apply for purposes of section 30D and the section 30D regulations, including any guidance thereunder. Proposed § 1.30D–2(f) is revised to include in the definition of ''section 30D regulations'' the provisions of proposed § 1.30D–5 as set forth in the October 2023 proposed regulations and proposed § 1.30D–6 as set forth in these proposed regulations. Proposed § 1.30D–2(k) would provide, consistent with section 30D(d)(3), that ''manufacturer'' means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements provided in section

30D(d)(3) must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards set by EPA under the Clean Air Act (42 U.S.C. 7521 *et seq.*) for the subject vehicle.

Proposed § 1.30D–2(l) would provide that a qualified manufacturer means a manufacturer that meets the requirements described in section 30D(d)(3). A qualified manufacturer would not include any manufacturer whose qualified manufacturer status has been terminated by the IRS. The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D and the regulations and guidance thereunder, including with respect to the periodic written reports described in section 30D(d)(3) and proposed § 1.30D–2(m) and any attestations, documentation, or certifications described in proposed § 1.30D–3(e) and proposed § 1.30D–6(d), at the time and in the manner provided in the Internal Revenue Bulletin.

Proposed § 1.30D–2(m) would provide that a ''new clean vehicle'' means a vehicle that meets the requirements described in section 30D(d). A new clean vehicle would not include any vehicle for which the qualified manufacturer does any of the following: (1) fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the VIN of such vehicle and certifying compliance with the requirements of section 30D(d); (2) provides incorrect information with respect to the periodic written report for such vehicle; (3) fails to update its periodic written report in the event of a material change with respect to such vehicle; or, (4) for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer fails to meet the requirements of proposed § 1.30D–6(d). For purposes of section 30D(d)(6), the term ''new clean vehicle'' includes any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) which meets the requirements under section 30D(d)(1)(G) and (H). The Treasury Department and the IRS request comment on whether, in the interest of sound tax administration and to provide additional transparency to taxpayers, it would be feasible and helpful for tax administration if qualified manufacturers were to encode eligibility for section 30D through a particular calendar year into the VIN using an alphanumeric combination.

II. Section 1.30D–3 Provisions

Proposed § 1.30D–3(d) would provide rules regarding excluded entities by reference to proposed § 1.30D–6.

Proposed § 1.30D–3(e) would provide for an upfront review of conformance with the critical minerals requirement and battery components requirement. Specifically, proposed § 1.30D–3(e) would provide that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, will review the attestations, certifications, and documentations.

III. Excluded Entities

A. Definitions

The proposed regulations would provide definitions for terms relevant to the excluded entity provision. To the extent many of these terms were defined in the April 2023 proposed regulations, these proposed regulations would provide the same definitions for such terms as is provided in proposed § 1.30D–3(c). The Treasury Department and the IRS intend that terms relevant to both the critical mineral and battery component requirements described in proposed § 1.30D–3 and the excluded entity restrictions described in these proposed regulations are interpreted consistently.

1. Applicable Critical Mineral

Proposed § 1.30D–6(a)(1) would define ''applicable critical mineral'' as an applicable critical mineral as defined in section 45X(c)(6). Guidance regarding the definition of applicable critical minerals, including the applicable critical minerals that are used in electric vehicle batteries to facilitate the electrochemical processes necessary for energy storage, would be provided in forthcoming proposed regulations under section 45X.

2. Assembly

Proposed § 1.30D–6(a)(2) would define ''assembly'' as, with respect to battery components, the process of combining battery components into battery cells and battery modules.

3. Battery

Proposed § 1.30D–6(a)(3) would define ''battery'' as, for purposes of a new clean vehicle, a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

4. Battery Cell

Proposed § 1.30D–6(a)(4) would define ''battery cell'' as a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

5. Battery Cell Production Facility

Proposed § 1.30D–6(a)(5) would define ''battery cell production facility'' as a facility in which battery cells are manufactured or assembled.

6. Battery Component

Proposed § 1.30D–6(a)(6) would define ''battery component'' as a component that forms part of a battery and that is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Proposed § 1.30D–6(a)(6) would specify that battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

7. Compliant-Battery Ledger

Proposed § 1.30D–6(a)(7) would define ''compliant-battery ledger,'' for a qualified manufacturer for a calendar year, as a ledger that tracks the number of available FEOC-compliant batteries for such calendar year. A compliant-battery ledger is established under the rules of proposed § 1.30D–6(d), described in part III.D. of this Explanation of Provisions.

8. Constituent Materials

Proposed § 1.30D–6(a)(8) would define ''constituent materials'' as materials that contain applicable critical minerals and that are employed directly in the manufacturing of battery components. Proposed § 1.30D–6(a)(8) would specify that constituent materials may include, but are not limited to,

powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

9. Extraction

Proposed § 1.30D–6(a)(9) would define ''extraction'' to mean the activities performed to harvest minerals or natural resources from the ground or a body of water. Extraction would include, but would not be limited to, operating equipment to harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction would conclude when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction would include the physical processes involved in refining. Extraction would not include the chemical and thermal processes involved in refining.

10. Foreign Entity of Concern

Proposed § 1.30D–6(a)(10) would define ''foreign entity of concern (FEOC)'' to have the same meaning as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) and guidance promulgated thereunder by the DOE.

11. FEOC-Compliant

Proposed § 1.30D–6(a)(11) would define ''FEOC-compliant'' to mean in compliance with the applicable excluded entity requirement under section 30D(d)(7). In particular, the proposed regulation would provide definitions of FEOC-compliant with respect to a battery component (other than a battery cell), applicable critical mineral, battery cell, or battery. This definition would treat battery cells separately from other battery components because battery cells contain applicable critical minerals (and associated constituent materials) as well as other battery components. Thus, the applicable rules under section 30D(d)(7) must be satisfied for such critical minerals and such components contained in the battery cell as well as the battery cell itself. A battery component (other than a battery cell), with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it is not manufactured or assembled by a FEOC. An applicable critical mineral, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not extracted, processed, or recycled by a FEOC. As described in part III.C.4. of this Explanation of Provisions, in general, the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6). A battery cell, with respect to a new clean vehicle placed in service after December 31, 2023, and before January 1, 2025, is FEOC compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components. A battery cell, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components and applicable critical minerals. A battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells.

12. Manufacturing

Proposed § 1.30D–6(a)(12) would define ''manufacturing'' to mean, with respect to a battery component, the industrial and chemical steps taken to produce a battery component.

13. Non-Traceable Battery Materials

Proposed § 1.30D–6(a)(13)(i) would define ''non-traceable battery materials'' to mean specifically identified low-value battery materials that may originate from multiple sources and are often commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. Proposed § 1.30D–6(a)(13)(ii), which is reserved, would contain the specific list of identified non-traceable battery materials. Low-value battery materials are those that, like the exemplar materials listed below, have low value compared to the total value of the battery. Where battery materials make up only a very small percentage of the value of the battery as a whole, many industry participants, prior to the passage of the IRA, had little reason to trace the source of these materials. As a result, unlike with higher value battery materials, tracing the source of these low value materials is not immediately feasible, which makes it in turn not feasible for qualified manufacturers to provide the necessary assurance to the IRS that their materials are FEOC-compliant.

The Treasury Department and the IRS, after extensive consultation with the Department of Energy, are considering whether the following applicable critical minerals (and associated constituent materials) may be designated as identified non-traceable battery materials: applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives. These exemplar materials each account for less than two percent of the value of applicable critical minerals in the battery, and the Treasury Department and the IRS understand that industry tracing of these particular applicable critical mineral production processes is uncommon and third-party standards for doing so are underdeveloped. Other materials for inclusion could include, for example, other low-value electrode active materials that are also subject to the traceability difficulties described in part III.A.13. of this Explanation of Provisions. As discussed further below, the Treasury Department and the IRS request comment on: (1) whether other applicable critical minerals (and associated constituent materials) should be designated as identified non-traceable battery materials for the same reasons, and (2) whether an approach other than the proposed list of non-traceable battery materials would better address the traceability issues discussed here. As discussed in part III.B.2. of this Explanation of Provisions, some stakeholders have suggested that the Treasury Department and the IRS adopt a de minimis exception to the excluded entity restrictions based on value, weight, mass, or other considerations. In response to these comments, the Treasury Department and the IRS have proposed a transition rule that would temporarily exclude a specific list of identified non-traceable battery materials from the due diligence requirements of the qualified manufacturers.

The Treasury Department and the IRS request comments on the best approach to addressing low-value battery materials for which tracing to their source is not immediately feasible. The Treasury Department and the IRS request comment on whether the proposed approach is a sound method of accounting for non-traceable battery materials, and whether other criteria should be used to distinguish between traceable and non-traceable battery materials. In particular, the Treasury Department and the IRS request

comments that explain whether and why certain battery materials are prohibitively difficult to trace at this time given current supply chains and current broadly available tools and practices for supply-chain tracing in the battery sector, and that explain how the supply chain may be limited by any such difficulty. The Treasury Department and the IRS also request comments explaining how the state of supply chains and tools and practices for supply-chain tracing are expected to evolve in the coming months and years for battery materials that are prohibitively difficult to trace at present. The Treasury Department and the IRS further request comments explaining the state of recordkeeping that is currently used in the industry to trace supply chains, what kind of recordkeeping requirements would facilitate better tracing of supply chains in the coming months and years, how to encourage manufacturers to adopt appropriate tracing systems as soon as practicable, and how these rules incentivize further shifting of supply chains in a manner that will strengthen our energy security, national security, and domestic manufacturing.

In addition, the Treasury Department and the IRS request comment on whether the listed materials are appropriately characterized as non-traceable battery materials. The Treasury Department and the IRS further request comment on whether any other applicable critical minerals, including associated constituent materials, would also be appropriately characterized as non-traceable battery materials because they meet the required criteria. The Treasury Department and the IRS further request comment on whether other criteria should be applied to determine what qualifies as non-traceable battery materials, and what applicable critical minerals, including associated constituent materials, would be appropriately characterized as such materials under the suggested criteria. Finally, the Treasury Department and the IRS seek comment describing alternative approaches to addressing the challenges posed by low-value battery materials that are not currently feasible to trace to their origins.

14. Processing

Proposed § 1.30D–6(a)(14) would define ''processing'' to mean the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

15. Recycling

Proposed § 1.30D–6(a)(15) would define ''recycling'' to mean the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

B. Due Diligence and Transition Rule for Non-Traceable Battery Materials

1. Due Diligence

Proposed § 1.30D–6(b)(1) would provide that the qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. This due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enable the qualified manufacturer to know with reasonable certainty the provenance of applicable critical minerals, constituent materials, and battery components. Such tracing standards may include international battery passport certifications and enhanced battery material and component tracking and labeling. Proposed § 1.30D–6(b)(1) would specify that reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after due diligence that such supplier attestation or certification is incorrect.

The due diligence must be conducted by the qualified manufacturer prior to its determination of any information to establish a compliant-battery ledger described in proposed § 1.30D–6(d), and on an on-going basis. A battery is not considered FEOC-compliant unless the qualified manufacturer has conducted such due diligence with respect to all such components and applicable critical minerals of the battery and provided required attestations or certifications described in part III.D. of this Explanation of Provisions.

2. Transition Rule For Non-Traceable Battery Materials

Proposed § 1.30D–6(b)(2) would provide that for any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement may be satisfied by excluding identified non-traceable battery materials (and associated constituent materials), as defined in proposed § 1.30D–6(a)(13)(ii). In addition, as described in part III.C.3. of this Explanation of Provisions, identified non-traceable battery materials (and associated constituent materials) may be excluded from the determination of whether a battery cell is FEOC-compliant. To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in part III.D. of this Explanation of Provisions demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect and all materials must be fully traced through the entire electric vehicle battery supply chain.

As described in part III.A.13. of this Explanation of Provisions, the Treasury Department and the IRS understand, after extensive consultation with the Department of Energy, that industry has not developed standards or systems for tracing certain low-value materials with precision. This inability to trace is exacerbated by the practice of commingling such materials within the materials processing supply chain. To address this issue, some stakeholders have suggested that the Treasury Department and the IRS adopt a de minimis exception to the excluded entity restrictions based on value, weight, mass, or other considerations. The Treasury Department and the IRS understand the tracing concerns in light of current standards and systems. However, these standards and systems may develop to allow for improved tracing in the future.

The Treasury Department and the IRS therefore recognize the potential need for a transition rule to enable determination of FEOC compliance while detailed tracing practices are being developed to allow for full sourcing and tracing of applicable critical mineral supply chains. The transition rule in proposed § 1.30D–6(b)(2) and (c)(3)(iii) is one option that the Treasury Department and the IRS are considering for such a rule. The Treasury Department and the IRS also are considering and seeking comment on possible alternative approaches for a

transition rule that would address low-value materials that cannot be traced under current industry standards and that would be responsive to rapidly changing industry practices regarding specific materials or overall battery composition, or no transition rule at all.

This transition rule in proposed § 1.30D–6(b)(2) is proposed to phase out for any new clean vehicles for which the manufacturer is required to provide a periodic written report after December 31, 2026. The Treasury Department and the IRS request comments on the need for and design of this transition rule, including data or other objective information to support such comments.

The Treasury Department and IRS also request comment on whether the challenges identified in this Explanation of Provisions related to traceability of low-value materials should instead be addressed through an alternative approach. The Treasury Department and the IRS request comment on whether a transition rule that adopts an alternative to the approach of listing materials would better achieve the Treasury Department's and IRS's stated goals and the challenges posed by low-value materials that are not currently feasible to trace. The Treasury Department and the IRS specifically request comment describing alternative approaches to providing a transition rule that accounts for low-value materials that cannot be traced under current industry standards and that is responsive to rapidly changing industry practice, if commenters believe a different approach could better achieve the Treasury Department's and IRS's stated goals. Such alternative approaches, which might include ones that use principle-based criteria instead of the listing of specific non-traceable battery materials in a final regulation, should be narrowly tailored to address the traceability challenges identified, enable effective administration by the IRS, and phase-out on a schedule consistent with the reasonable development of industry standards.

C. Excluded Entity Restriction

1. In General

Proposed § 1.30D–6(c)(1) would provide that in the case of any new clean vehicle placed in service after December 31, 2023, the batteries from which the electric motor of such vehicle draws electricity must be FEOC-compliant. A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles.

The proposed regulation would provide that the determination that a battery is FEOC-compliant is made as follows: First, the qualified manufacturer makes a determination of whether battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant, in accordance with rules for the determination of FEOC-compliant battery components and applicable critical minerals, which are described in part III.C.4. of this Explanation of Provisions. Next, the FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with rules for the determination of FEOC compliant-battery cells, described in part III.C.3. of this Explanation of Provisions. Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance the rules for a temporary allocation-based determination for applicable critical minerals and associated constituent materials, described in part III.C.3.a of this Explanation of Provisions. Finally, the battery components, including battery cells, are physically tracked to specific batteries, in accordance with the rules for the determination of FEOC-compliant batteries described in part II.C.2 of this Explanation of Provisions.

2. Determination of FEOC-Compliant Batteries

Proposed § 1.30D–6(c)(2) would provide that the determination that a battery is FEOC-compliant must be made by physically tracking FEOC-compliant battery components, including battery cells, to such battery. With respect to battery cells, a serial number or other identification system must be used to physically track FEOC-compliant battery cells to such batteries.

3. Determination of FEOC-Compliant Battery Cell

Proposed § 1.30D–6(c)(3)(i) would provide that, except as described in part III.C.3.a. of this Explanation of Provisions, the determination that a battery cell contains FEOC-compliant battery components and FEOC-compliant applicable critical minerals and their associated constituent materials must be made by physically tracking FEOC-compliant battery components to specific battery cells and by physically tracking the mass of FEOC-compliant applicable critical minerals and associated constituent materials to specific battery cells.

a. Temporary Allocation-Based Determination for Applicable Critical Materials and Associated Constituent Materials of a Battery Cell

Proposed § 1.30D–6(c)(3)(ii)(A) would provide that the determination that a battery cell is a FEOC-compliant battery cell may be made through an allocation of available mass of applicable critical minerals and associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of the mass of applicable critical minerals (and associated constituent materials) to specific battery cells. This allocation-based determination is an exception to the general rule, requiring specific tracking, of proposed § 1.30D–6(c)(3)(ii)(A). As provided in proposed § 1.30D–6(c)(3)(ii)(F), the Treasury Department and the IRS propose that this exception would be a temporary rule for any new clean vehicle for which the qualified manufacturer provides a periodic written report before January 1, 2027.

After extensive consultation with the DOE, the Treasury Department and the IRS understand that certain applicable critical minerals (and associated constituent materials) are commingled prior to delivery to or at the battery cell production facility. Thus, while the qualified manufacturer and its suppliers can trace such minerals through the entire electric vehicle battery supply chain to determine FEOC-compliance, the manufacturer and suppliers cannot physically track specific mass of minerals to specific battery cells or batteries. As a result, the qualified manufacturer cannot determine which battery cells or batteries are FEOC-compliant, absent an allocation-based determination.

The Treasury Department and the IRS anticipate that industry accounting practices may adapt to compliance regimes that require physical supply chain tracking in the future, whether through the acquisition of wholly-compliant supply, the separation of currently-commingled supply chains, the development of physical tracking systems, or some combination thereof. Accordingly, this exception is proposed to phase out for any new clean vehicle for which the qualified manufacturer provides a periodic written report after December 31, 2026. The Treasury Department and the IRS request comments on the need for, design, and duration of this temporary rule, including data or other objective information to support such comments. The Treasury Department and the IRS

also request comment on whether industry practices are likely to develop that allow for physical tracking before December 31, 2032, and, if not, whether allocation-based accounting should be included as a permanent compliance approach, rather than as a temporary transition rule.

Proposed § 1.30D–6(c)(3)(ii)(B) would provide that the temporary allocation-based determination rules are limited to applicable critical minerals and associated constituent materials that are incorporated into a battery cell or its battery components. Battery components must be physically tracked.

Proposed § 1.30D–6(c)(3)(ii)(C) would provide that any allocation with respect to the mass of an applicable critical mineral must be made within the type of constituent materials (such as powders of cathode active materials, powders of anode active materials, or foils) in which such mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials with which such applicable critical mineral is not associated, and an allocation of mass of an applicable critical mineral may not be made from one type of constituent material to another. Proposed § 1.30D–6(c)(3)(ii)(C) also provides an example illustrating this rule.

Proposed § 1.30D–6(c)(3)(ii)(D) would provide that any allocation with respect to applicable critical minerals and their associated constituent materials must be allocated within one or more specific battery cell product lines of the battery cell production facility, such that a particular mass of constituent material is not treated as fungible across different battery chemistries and designs.

Proposed § 1.30D–6(c)(3)(ii)(E) would provide that if a qualified manufacturer uses the allocation-based determination rules described in this part III.C.3.a., the quantity of FEOC-compliant battery cells that can result from this allocation may not exceed the number of battery cells for which there is enough FEOC-compliant quantity of every applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates all of applicable critical mineral A, that is 20 percent FEOC-compliant, and all of applicable critical mineral B, that is 60 percent FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line may be FEOC-compliant.

Proposed § 1.30D–6(c)(3)(ii)(F) would provide that the rules of proposed § 1.30D–6(c)(3)(ii) do not apply with respect to any new clean vehicle for which the qualified manufacturer provides a periodic written report after December 31, 2026.

b. Transition Rule for Non-Traceable Battery Materials

Proposed § 1.30D–6(c)(3)(iii) would provide that for new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under proposed § 1.30D–6(c)(3) may be satisfied by excluding non-traceable battery materials, and their associated constituent materials. To use this transition rule, which is further discussed in part III.B. of this Explanation of Provisions, qualified manufacturers must submit a report during the up-front review process described in proposed § 1.30D–6(d)(2)(ii).

4. Determination of FEOC-Compliant Battery Components and Applicable Critical Minerals

Proposed § 1.30D–6(c)(4) would provide that the determination that battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be made prior to any determination under proposed § 1.30D–6(c)(2) and (3). In general, the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6)), such as nickel sulphate that is used in production of a nickel-manganese-cobalt cathode active powder. A constituent material would be associated with an applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a form not listed in section 45X(c)(6). However, an applicable critical mineral would be disregarded for purposes of the determination under proposed § 1.30D–6(c)(4) if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery, such as certain solvents used in electrode production.

With respect to recycling, applicable critical minerals and associated constituent materials that are recycled would be subject to the determination of whether such mineral is FEOC-compliant if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process. Thus, for example, an applicable critical mineral derived from recyclable material that was recycled by an entity that is not a FEOC would be FEOC-compliant even if such mineral may have been extracted by a FEOC prior to its inclusion in the recyclable material.

Whether an entity is a FEOC is determined as of the time of the entity's performance of the relevant activity, which for applicable critical minerals is the time of extraction, processing, or recycling, and for battery components is the time of manufacturing or assembly. The determination of whether an applicable critical mineral is FEOC-compliant is determined at the end of processing or recycling of the applicable critical mineral into a constituent material, taking into account all applicable steps prior to final processing or recycling. Thus, for example, an applicable critical mineral that is not extracted by a FEOC but is processed by a FEOC is not FEOC-compliant.

Proposed § 1.30D–6(c)(4)(iv) provides examples regarding determinations of FEOC-compliant battery components and applicable critical minerals.

5. Third-Party Manufacturers or Suppliers

Proposed § 1.30D–6(c)(5) would provide that the determinations under proposed § 1.30D–6(c)(2) through (4) may be made by a third-party manufacturer or supplier that operates a battery cell production facility provided that the manufacturer or supplier performs the due diligence described in proposed § 1.30D–6 and provides the qualified manufacturer of the new clean vehicle information sufficient to establish a basis for the determinations under proposed § 1.30D–6(c)(2) through (4). In addition, the manufacturer or supplier must be contractually required to provide such information to the qualified manufacturer of the new clean vehicle and must be contractually required to inform the qualified manufacturer of any changes in the supply chain that affect determinations of FEOC compliance. In the case of multiple third-party manufacturers or suppliers (such as if a manufacturer

contracts with a battery manufacturer, who, in turn, contracts with a manufacturer or supplier who operates a battery cell production facility), the due diligence and information requirements must be satisfied by each such manufacturer or supplier either directly to the qualified manufacturer or indirectly through contractual relationships.

D. Compliant-Battery Ledger

1. In General

Proposed § 1.30D–6(d)(1) would provide that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must determine and provide information to the IRS to establish a compliant-battery ledger for each calendar year, as described in proposed § 1.30D–6(d)(2)(i) and (ii). One compliant-battery ledger may be established for all vehicles for a calendar year, or there may be separate ledgers for specific models or classes of vehicles.

2. Determination of Number of Batteries

Proposed § 1.30D–6(d)(2)(i) would provide that, to establish a compliant-battery ledger for a calendar year, the qualified manufacturer must determine the number of batteries, with respect to new clean vehicles (as described in section 30D(d) and proposed § 1.30D–2(m)) for which the qualified manufacturer anticipates providing a periodic written report during the calendar year, that it knows or reasonably anticipates will be FEOC-compliant, pursuant to the requirements of proposed § 1.30D–6(b) and (c). The determination would be based on the battery components and applicable critical minerals (and associated constituent materials) that are procured or contracted for the calendar year and that are known or reasonably anticipated to be FEOC-compliant battery components or FEOC-compliant applicable critical minerals, as applicable.

Proposed § 1.30D–6(d)(2)(ii) would provide a process for upfront review of the number of batteries described in the preceding paragraph. Specifically, the proposed rule would provide that the qualified manufacturer must attest to the number of FEOC-compliant batteries determined under proposed § 1.30D–6(d)(2)(i) and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with proposed § 1.30D–6(b) and (c), at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, would review the attestations, certifications, and documentation. Once the IRS has determined that the qualified manufacturer has provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number will be the initial balance in the compliant-battery ledger.

Proposed § 1.30D–6(d)(2)(iii) would provide rules for decreasing or increasing the balance of the compliant-battery ledger. Specifically, once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year, and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis in the manner provided in the Internal Revenue Bulletin.

The decrease described in the previous paragraph may decrease the compliant-battery ledger below zero, creating a negative balance in the compliant-battery ledger. In addition, if any such decrease is determined subsequent to the calendar year to which it relates, the decrease will be taken into account in the year in which the change is discovered. The remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple compliant-battery ledgers with negative balances, any negative balance would first be included in the compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year, the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

3. Tracking FEOC-Compliant Batteries

Proposed § 1.30D–6(d)(3) would provide that the compliant-battery ledger for a calendar year must be updated to track the number of available FEOC-compliant batteries of the qualified manufacturer, by reducing the balance of the ledger as the qualified manufacturer submits periodic written reports reporting the VINs of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner provided in the Internal Revenue Bulletin. If the balance of the compliant-battery ledger for a calendar year of the qualified manufacturer is zero or less than zero, the qualified manufacturer would not be able to submit additional periodic written reports with respect to section 30D.

4. Reconciliation of Battery Estimates

Proposed § 1.30D–6(d)(4) would provide that, after the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of FEOC-compliant batteries of the qualified manufacturer for such calendar year, including with respect to any changes described in paragraph (d)(3)(iii), at the time and in the manner provided in the Internal Revenue Bulletin.

E. Rule for 2024

Proposed § 1.30D–6(e) would provide rules for new clean vehicles placed in service in 2024. This rule may apply to new clean vehicles for which the qualified manufacturer submits a periodic written report in 2024 as well as new clean vehicles for which a qualified manufacturer submitted a periodic written report in 2023. Thus, for example, a vehicle that was anticipated to be placed in service in 2023 that remains unsold at the end of 2023 is subject to these rules if placed in service in 2024.

Specifically, proposed § 1.30D–6(e)(1) would provide that, for new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in such vehicles satisfy the requirements of section 30D(d)(7)(B) and whether batteries contained in the vehicle are FEOC-compliant under the rules of proposed § 1.30D–6(b) and (c). The qualified manufacturer would be required to make an attestation with respect to such determinations at the time and in the manner provided in the Internal Revenue Bulletin.

However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before the date that is 30 days after the date these regulations are finalized, provided that the qualified manufacturer has determined that its supply chain of

battery components with respect to such vehicles contains only FEOC-compliant battery components: (i) for purposes of the determination of FEOC-compliant batteries and FEOC-compliant battery cells described in parts III.C.2 and III.C.3. of this Explanation of Provisions, the determination of which battery cells or batteries, as applicable, contain FEOC-compliant battery components may be determined without physical tracking; (ii) for purposes of the determination of FEOC-compliant batteries, the determination of which batteries contain FEOC-compliant battery cells may be determined without physical tracking (and without the use of a serial number or other identification system); and (iii) for purposes of the determination that a vehicle contains a FEOC-compliant battery and therefore is a new clean vehicle, as described in part III.C.1. of this Explanation of Provisions, the determination of which vehicles contain FEOC-compliant batteries may be determined without physical tracking (and without the use of a serial number or other identification system).

Under proposed § 1.30D–6(e)(2), the determination that a qualified manufacturer's supply chain of battery components contains only FEOC-compliant batteries may be made with respect to specific models or classes of vehicles.

F. Inaccurate Attestations, Certifications or Documentation

1. In General

Proposed § 1.30D–6(f)(1) would provide that if the IRS determines, with analytical assistance from the DOE and after review of the attestations, certifications, and documentation described in part III.D. of this Explanation of Provisions, that a qualified manufacturer provided inaccurate attestations, certifications, or documentation, the IRS may take certain actions against the qualified manufacturer, depending on the severity of the inaccuracy. Such actions would affect new clean vehicles and qualified manufacturers on a prospective basis.

2. Inadvertence

Proposed § 1.30D–6(f)(2) would provide that if the IRS determines that the attestations, certifications, or documentation for a new clean vehicle contain errors due to inadvertence, the following may be required: The qualified manufacturer may cure the errors identified, including by a decrease in the compliant-battery ledger of the qualified manufacturer. However, if the errors are not cured, in the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirements of section 30D(d), such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit. If the errors are not cured, in the case of a new clean vehicle that has not been placed in service and for which the qualified manufacturer has not submitted a periodic written report, the qualified manufacturer may not submit a periodic written report certifying compliance with the requirements of section 30D(d). Finally, if the errors are not cured, in the case of a new clean vehicle that has been placed in service, the IRS may require a decrease to the compliant-battery ledger.

3. Intentional Disregard or Fraud

Proposed § 1.30D–6(f)(3) would provide guidance for cases of intentional disregard or fraud. Specifically, the proposed regulations would provide that if the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, and documentation requirements or reported information fraudulently or with intentional disregard, the IRS may determine that all vehicles of the qualified manufacturer that have not been placed in service are no longer considered new clean vehicles eligible for the section 30D credit. In addition, the IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the manufacturer's status as a qualified manufacturer. The manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the Internal Revenue Bulletin.

G. Examples

Proposed § 1.30D–6(g) would provide examples illustrating the application of the proposed rules regarding excluded entities. Example 1 would provide a general set of facts and analysis. Example 2 would provide an example illustrating the rules for third-party suppliers. Example 3 would provide an example illustrating the general rules for applicable critical minerals. Example 4 would provide a comprehensive example with specified battery components and applicable critical minerals (and associated constituent materials).

VI. Severability

Proposed § 1.30D–6(h) would provide that if any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Proposed Applicability Dates

Consistent with the April 2023 proposed regulations, previously proposed § 1.30D–2(a) through (h) are proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. Newly proposed § 1.30D–2(j) through (m) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

Consistent with the April 2023 proposed regulations, previously proposed § 1.30D–3(a) through (c) and (f) are proposed to apply to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023. Newly proposed § 1.30D–3(d) and (e) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

Section 30D(d)(7) provides that the excluded entity provisions apply to vehicles placed in service after December 31, 2023, for battery components, and after December 31, 2024, for applicable critical minerals. Accordingly proposed § 1.30D–6 is proposed to apply to new clean vehicles placed in service after December 31, 2023.

Taxpayers may rely on these proposed regulations for vehicles placed in service prior to the date final regulations are published in the **Federal Register**, provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

Effect on Other Documents

This notice of proposed rulemaking modifies proposed §§ 1.30D–2 and 1.30D–3 of the April 2023 proposed regulations.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is

mandatory, voluntary, or required to obtain or retain a benefit.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed § 1.30D–6 regarding excluded entities will be reflected in the PRA Submissions associated with OMB control number 1545–2311. OMB Control Number 1545–2137 covers Form 8936 and Form 8936–A regarding clean vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure 2022–42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the IRS to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component attestation or certification requirements in section 30D(e)(1)(A) and (2)(A). In addition, Revenue Procedure 2022–42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022–42 are described in that document and were submitted to the Office of Management and Budget in accordance with the PRA under control number 1545–2137.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

The proposed regulations affect qualified manufacturers that must determine their compliance with the excluded entity requirements in order to certify that their new clean vehicles placed in service after December 31, 2023, qualify for the section 30D credit.

While the tracking and reporting of compliance with the excluded entity requirements is likely to involve significant administrative costs, according to public filings, every qualified manufacturer had total revenues above $1 billion in 2022. There are a total of 11 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit. Pursuant to Revenue Procedure 2022–42, Revenue Procedure 2023–33, and following the publication of these proposed regulations, qualified manufacturers will also have to certify that their vehicles comply with the excluded entity requirement and contain batteries that are FEOC-compliant. The proposed regulations provide definitions and general rules for this purposes. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for qualified manufacturers for consistent application of the excluded entity requirements. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity. Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department, the DOE, and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order for § 1.30D–6 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.30D–6 also issued under 26 U.S.C. 30D.

* * * * *

■ **Par. 2.** Section 1.30D–0, as proposed to be added at 88 FR 23370 (April 17, 2023) and proposed to be amended at 88 FR 70310 (October 10, 2023), is amended by:

■ a. Adding paragraphs (k), (l), and (m) under § 1.30D–2;

■ b. Revising paragraphs (e) and (f) under § 1.30D–3;

■ c. Adding paragraph (g) under § 1.30D–3; and

■ d. Adding an entry in numerical order for § 1.30D–6.

The additions and revisions read as follows:

§ 1.30D–0 Table of contents.

* * * * *

§ 1.30D–2 Definitions for purposes of section 30D.

* * * * *

(k) Manufacturer.

(l) Qualified manufacturer.

(m) New clean vehicle.

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§ 1.30D–3 Critical mineral and battery component requirements.

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(e) Upfront review of battery component and applicable critical minerals requirements.

(f) Severability.

(g) Applicability date.

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§ 1.30D–6 Excluded entities.

(a) Definitions.

(1) Applicable critical mineral.

(2) Assembly.

(3) Battery.

(4) Battery cell.

(5) Battery cell production facility.

(6) Battery component.

(7) Compliant-battery ledger.

(8) Constituent materials.

(9) Extraction.

(10) Foreign entity of concern.

(11) FEOC-compliant.

(12) Manufacturing.

(13) Non-traceable battery material.

(i) In general.

(ii) [Reserved]

(14) Processing.

(15) Recycling.

(b) Due diligence.

(1) In general.

(2) Transition rule for non-traceable battery materials.

(c) Excluded entity restriction.

(1) In general.

(2) Determination of FEOC-compliant batteries.

(3) Determination of FEOC-compliant battery cell.

(i) In general.

(ii) Temporary allocation-based determination for applicable critical materials contained in constituent materials of a battery cell.

(A) In general.

(B) Allocation limited to applicable critical minerals in the battery cell.

(C) Separate allocation for each class of constituent materials.

(D) Allocation within each product line of battery cells.

(E) Limitation on number of FEOC-compliant battery cells.

(F) Termination of temporary allocation-based determination.

(iii) Transition rule for non-traceable battery materials.

(4) Determination of FEOC-compliant battery components and applicable critical minerals.

(i) In general.

(ii) Applicable critical minerals.

(A) In general.

(B) Associated constituent materials.

(C) Exception for applicable critical minerals not contained in the battery.

(D) Recycling.

(iii) Timing of determination of FEOC-compliant status.

(iv) Examples.

(A) Example 1: Timing of FEOC compliance determination.

(B) Example 2: Form of applicable critical mineral.

(C) Example 3: Recycling of applicable critical mineral.

(5) Third-party manufacturers or suppliers.

(d) Compliant-battery ledger.

(1) In general.

(2) Determination of number of batteries.

(i) In general.

(ii) Upfront review.

(iii) Decrease or increase to compliant-battery ledger.

(3) Tracking FEOC-compliant batteries.

(4) Reconciliation of battery estimates.

(e) Rule for 2024.

(1) In general.

(2) Determination.

(f) Inaccurate attestations, certifications, or documentation.

(1) In general.

(2) Inadvertence.

(3) Intentional disregard of fraud.

(g) Examples.

(1) Example 1: In general.

(2) Example 2: Rules for third-party suppliers.

(3) Example 3: Applicable critical minerals.

(4) Example 4: Comprehensive example.

(h) Severability.

(i) Applicability date.

■ **Par. 3.** Section 1.30D–2, as proposed to be added at 88 FR 23370 (April 17, 2023) and proposed to be amended at 88 FR 70310 (October 10, 2023), is amended by revising paragraphs (a), (f), and (i) and adding paragraphs (k), (l), and (m) to read as follows:

§ 1.30D–2 Definitions for purposes of section 30D.

(a) *In general.* The definitions in this section apply for purposes of section 30D of the Internal Revenue Code (Code) and the section 30D regulations.

* * * * *

(f) *Section 30D regulations. Section 30D regulations* means § 1.30D–1, this section, and §§ 1.30D–3 through 1.30D–6.

* * * * *

(i) *Applicability date.* Paragraphs (a) through (h) of this section apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. Paragraphs (j) through (m) of this section apply for new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

* * * * *

(k) *Manufacturer.* A *manufacturer* means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements provided in section 30D(d)(3) must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards set by the EPA under the Clean Air Act (42 U.S.C. 7521 *et seq.*) for the subject vehicle.

(l) *Qualified manufacturer.* A *qualified manufacturer* means a manufacturer that meets the requirements described in section 30D(d)(3). The term qualified manufacturer does not include any manufacturer whose qualified manufacturer status has been terminated by the Internal Revenue Service (IRS). The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D, the section 30D regulations, or any guidance under section 30D, including with respect to the periodic written reports described in section 30D(d)(3) and § 1.30D–2(m) and any attestations, documentation, or certifications described in § 1.30D–3(e) and § 1.30D–6(d), at the time and in the

manner provided in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter). *See* § 1.30D–6(f) for additional rules regarding inaccurate determinations and documentation.

(m) *New clean vehicle.* A new clean vehicle means a vehicle that meets the requirements described in section 30D(d). A vehicle does not meet the requirements of section 30D(d) if—

(1) The qualified manufacturer fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the vehicle identification number (VIN) of such vehicle and certifying compliance with the requirement of section 30D(d);

(2) The qualified manufacturer provides incorrect information with respect to the periodic written report for such vehicle;

(3) The qualified manufacturer fails to update its periodic written report in the event of a material change with respect to such vehicle; or

(4) For new clean vehicles placed in service after December 31, 2024, the qualified manufacturer fails to meet the requirements of § 1.30D–6(d).

■ **Par. 4.** Section 1.30D–3, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by:

■ a. Revising paragraph (d);

■ b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);

■ c. Adding new paragraph (e); and

■ d. Revising newly redesignated paragraph (g).

The revisions and addition read as follows:

§ 1.30D–3 Critical mineral and battery component requirements.

* * * * *

(d) *Excluded entities.* For rules regarding excluded entities, *see* § 1.30D–6.

(e) *Upfront review of battery component and applicable critical minerals requirements.* For new clean vehicles anticipated to be placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter). The IRS, with analytical assistance from the Department of Energy, will review the attestations, certifications, and documentations.

* * * * *

(g) *Applicability date.* Paragraphs (a) through (c) and (f) of this section apply to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023. Paragraphs (d) and (e) of this section apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years beginning after December 31, 2023.

■ **Par. 5.** Section 1.30D–6 is added to read as follows:

§ 1.30D–6 Excluded entities.

(a) *Definitions.* This paragraph (a) provides definitions that apply for purposes of section 30D(d)(7) of the Internal Revenue Code (Code) and this section.

(1) *Applicable critical mineral.* Applicable critical mineral means an applicable critical mineral as defined in section 45X(c)(6) of the Code.

(2) *Assembly.* Assembly, with respect to battery components, means the process of combining battery components into battery cells and battery modules.

(3) *Battery.* Battery, for purposes of a new clean vehicle, means a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

(4) *Battery cell.* Battery cell, means a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

(5) *Battery cell production facility. Battery cell production facility* means a facility in which battery cells are manufactured or assembled.

(6) *Battery component. Battery component* means a component that forms part of a battery and that is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

(7) *Compliant-battery ledger.* A compliant-battery ledger, for a qualified manufacturer for a calendar year, is a ledger established under the rules of paragraph (d) of this section that tracks the number of available FEOC-compliant batteries for such calendar year.

(8) *Constituent materials. Constituent materials* means materials that contain applicable critical minerals and that are employed directly in the manufacturing of battery components. Constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

(9) *Extraction. Extraction* means the activities performed to harvest minerals or natural resources from the ground or a body of water. Extraction includes, but is not limited to, operating equipment to harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction concludes when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction includes the physical processes involved in refining. Extraction does not include the chemical and thermal processes involved in refining.

(10) *Foreign entity of concern. Foreign entity of concern* (FEOC) has the meaning provided in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) and guidance promulgated thereunder by the Department of Energy (DOE).

(11) *FEOC-compliant. FEOC-compliant* means in compliance with the applicable excluded entity requirement under section 30D(d)(7). In particular—

(i) A battery component (other than a battery cell), with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it is not manufactured or assembled by a FEOC;

(ii) An applicable critical mineral, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not extracted, processed, or recycled by a FEOC;

(iii) A battery cell, with respect to a new clean vehicle placed in service after December 31, 2023, and before January 1, 2025, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components;

(iv) A battery cell, with respect to a new clean vehicle placed in service after

December 31, 2024, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components and FEOC-compliant applicable critical minerals; and

(v) A battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells (as described in paragraph (a)(11)(iii) or (iv) of this section, as applicable).

(12) *Manufacturing. Manufacturing,* with respect to a battery component, means the industrial and chemical steps taken to produce a battery component.

(13) *Non-traceable battery materials*—(i) *In general. Non-traceable battery materials* mean specifically identified, low-value battery materials that originate from multiple sources and are commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. For this purpose, low-value battery materials are those that have low value compared to the total value of the battery.

(ii) [Reserved].

(14) *Processing. Processing* means the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

(15) *Recycling. Recycling* means the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

(b) *Due diligence*—(1) *In general.* The qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. Such due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enable the manufacturer to know with reasonable certainty the provenance of applicable critical minerals, constituent materials, and battery components. Reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after its due diligence that such supplier attestation or certification is incorrect. Due diligence must be conducted by the qualified manufacturer prior to its determining information necessary to establish any compliant-battery ledger under paragraph (d) of this section, and on an ongoing basis.

(2) *Transition rule for non-traceable battery materials.* For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement of paragraph (b)(1) of this section may be satisfied by excluding identified non-traceable battery materials. To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect.

(c) *Excluded entity restriction*—(1) *In general.* In the case of any new clean vehicle placed in service after December 31, 2023, the batteries from which the electric motor of such vehicle draws electricity must be FEOC-compliant. A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles. The determination that a battery is FEOC-compliant is made as follows:

(i) *Step 1.* First, the qualified manufacturer determines whether battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant, in accordance with paragraph (c)(4) of this section.

(ii) *Step 2.* Next, the FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with paragraph (c)(3)(i) of this section. Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance with paragraph (c)(3)(ii) of this section. In addition, the determination under paragraph (c)(4) of this section may be made by applying the transition rule for non-traceable battery materials, in accordance with paragraph (c)(3)(iii) of this section.

(iii) *Step 3.* Finally, the battery components, including battery cells, are physically tracked to specific batteries, in accordance with paragraph (c)(2) of this section.

(2) *Determination of FEOC-compliant batteries.* The determination that a battery is FEOC-compliant must be made by physically tracking FEOC-compliant battery components (including battery cells) to such battery. With respect to battery cells, a serial number or other identification system must be used to physically track FEOC-compliant battery cells to such batteries.

(3) *Determination of FEOC-compliant battery cell*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the determination that a battery cell contains FEOC-compliant battery components and FEOC-compliant applicable critical minerals and their associated constituent materials must be made by physically tracking FEOC-compliant battery components to specific batteries cells and by physically tracking the mass of FEOC-compliant applicable critical minerals and their associated constituent materials to specific batteries cells.

(ii) *Temporary allocation-based determination for applicable critical materials and associated constituent materials of a battery cell*—(A) *In general.* The determination that a battery cell is a FEOC-compliant battery cell may be based on an allocation of available mass, produced or contracted for, of applicable critical minerals and their associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of mass of applicable critical minerals and associated constituent materials to specific battery cells.

(B) *Allocation limited to applicable critical minerals in the battery cell.* The rules of this paragraph (c)(3)(ii) are limited to applicable critical minerals and their associated constituent materials that are incorporated into a battery cell or its battery components. Battery components must be physically tracked.

(C) *Separate allocation for each class of constituent materials.* Any allocation under this paragraph (c)(3)(ii) with respect to the mass of an applicable critical mineral must be made within the type of associated constituent materials (such as powders of cathode active materials, powders of anode active materials, or foils) in which such mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials

with which such applicable critical mineral is not associated, and an allocation of a mass of an applicable critical mineral may not be made from one type of constituent material to another. For example, assume that M, a qualified manufacturer, operates a battery cell production facility. M manufactures a line of battery cells that contains applicable critical mineral Z contained in constituent material 1 and applicable critical mineral Z contained in constituent material 2. With respect to constituent material 1, M procures 20,000,000 kilograms (kg) of applicable critical mineral Z for the battery cell production facility, of which 4,000,000 kg are FEOC-compliant and 16,000,000 kg are not FEOC-compliant. With respect to constituent material 2, M procures another 15,000,000 kg of applicable critical mineral Z for the battery cell production facility, of which 7,500,000 kg are FEOC-compliant and 7,500,000 kg are not FEOC-compliant. M determines which battery cells are FEOC-compliant through an allocation-based determination with respect to battery cells manufactured or assembled in the battery cell production facility. Under this paragraph (c)(3)(ii)(C), any allocation with respect to the mass of applicable critical mineral Z must be made within the type of constituent materials in which such mineral is contained. Thus, M may not aggregate the 4,000,000 kg mass of FEOC-compliant applicable critical mineral Z contained in constituent material 1 with the 7,500,000 kg mass of FEOC-compliant applicable critical mineral Z contained in constituent material 2, and allocations may not be made from constituent material 1 to constituent material 2. As a result, overall FEOC compliance is constrained by the 20 percent of constituent material 1 that is FEOC-compliant due to having 4,000,000 kg of applicable critical mineral Z, even though 33 percent (7,500,000 + 4,000,000)/(20,000,000 + 15,000,000) of the total mass of critical mineral Z is compliant.

(D) *Allocation within each product line of battery cells.* Any allocation under this paragraph (c)(3)(ii) with respect to applicable critical minerals and their associated constituent materials must be allocated within one or more specific battery cell product lines of the battery cell production facility.

(E) *Limitation on number of FEOC-compliant battery cells.* If a qualified manufacturer uses an allocation-based determination described in this paragraph (c)(3)(ii), the number of FEOC-compliant battery cells that can be produced from such allocation may not exceed the total number of battery cells for which there is enough of every FEOC-compliant applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates applicable critical mineral A, which is 20 percent FEOC-compliant and applicable critical mineral B, which is 60 percent FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line will be treated as FEOC-compliant.

(F) *Termination of temporary allocation-based determination.* The rules of this paragraph (c)(3)(ii) do not apply with respect to any new clean vehicle for which the qualified manufacturer is required to provide a periodic written report after December 31, 2026.

(iii) *Transition rule for non-traceable battery materials.* For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under this paragraph (c)(3) may be satisfied by excluding identified non-traceable battery materials (and associated constituent materials). To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect.

(4) *Determination of FEOC-compliant battery components and applicable critical minerals*—(i) *In general.* The determination of whether battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be made prior to any determination under paragraphs (c)(2) and (3) of this section.

(ii) *Applicable critical minerals*—(A) *In general.* Except as provided in paragraph (c)(4)(ii)(D) of this section, the determination of whether an applicable critical mineral is FEOC-compliant takes into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step.

(B) *Associated constituent materials.* A constituent material is associated with an applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a form not listed in section 45X(c)(6).

(C) *Exception for applicable critical minerals not contained in the battery.* An applicable critical mineral is disregarded for purposes of the determination under this paragraph (c)(4) if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery.

(D) *Recycling.* An applicable critical mineral and associated constituent material that is recycled is subject to the determination under this paragraph (c)(4) if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process.

(iii) *Timing of determination of FEOC-compliant status.* Whether an entity is a FEOC is determined as of the time of the entity's performance of the relevant activity, which for applicable critical minerals is the time of extraction, processing, or recycling, and for battery components is the time of manufacturing or assembly. The determination of whether an applicable critical mineral is FEOC-compliant is determined at the end of processing or recycling of the applicable critical mineral into a constituent material, taking into account all applicable steps through and including final processing or recycling.

(iv) *Examples.* The following examples illustrate the rules under this paragraph (c)(4):

(A) *Example 1: Timing of FEOC compliance determination.* Mineral X, an applicable critical mineral, was not extracted by a FEOC but was later processed by a FEOC. Mineral X is not FEOC-compliant because one step of the extraction and processing was performed by a FEOC. Any battery containing Mineral X is not FEOC-compliant.

(B) *Example 2: Form of applicable critical mineral.* Mineral Y is extracted by a FEOC and is intended to be incorporated into the battery of an electric vehicle. Mineral Y is not in a form listed in section 45X(c)(6) at the time of such extraction, but subsequently it is refined into an

applicable critical mineral form listed in section 45X(c)(6) by an entity that is not a FEOC. Mineral Y is not FEOC-compliant pursuant to this paragraph (c)(4) because it was extracted by a FEOC, regardless of its form at the time of extraction. Any battery containing Mineral Y is not FEOC-compliant.

(C) *Example 3: Recycling of applicable critical mineral.* Mineral Z, an applicable critical mineral in a form listed in section 45X(c)(6), was processed by a FEOC in a prior production process. Mineral Z subsequently was derived from recyclable material in a form not listed in section 45X(c)(6). Mineral Z was recycled by an entity that is not a FEOC. Mineral Z is subject to a determination of whether it is FEOC-compliant at the end of the recycling process, because it was at one time an applicable critical mineral. Mineral Z is FEOC-compliant pursuant to this paragraph (c)(4) because it was not recycled by a FEOC.

(5) *Third-party manufacturers or suppliers.* The determinations under paragraphs (c)(2) through (4) of this section may be made by a third-party manufacturer or supplier that operates a battery cell production facility provided that:

(i) The third-party manufacturer or supplier performs the due diligence described in paragraph (b) of this section;

(ii) The third-party manufacturer or supplier provides the qualified manufacturer of the new clean vehicle information sufficient to establish a basis for the determinations under paragraphs (c)(2) through (4) of this section, including information related to the due diligence described in paragraph (c)(5)(i) of this section;

(iii) The third-party manufacturer or supplier is contractually required to provide the information in paragraph (c)(5)(ii) of this section to the qualified manufacturer and is contractually required to inform the qualified manufacturer of any change in the supply chain that affects the determinations of FEOC compliance under paragraph (c)(2) and (4) of this section; and

(iv) If there are multiple third-party manufacturers or suppliers (such as a case in which a qualified manufacturer contracts with a battery manufacturer, who, in turn, contracts with a battery cell manufacturer or supplier who operates a battery cell production facility), the due diligence and information requirements of this paragraph (c) must be satisfied by each such manufacturer or supplier either directly to the qualified manufacturer or indirectly through contractual relationships.

(d) *Compliant-battery ledger*—(1) *In general.* For new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must determine and provide information to the IRS to establish a compliant-battery ledger for each calendar year, as described in paragraphs (d)(2)(i) and (ii) of this section. One compliant-battery ledger may be established for all vehicles for a calendar year, or there may be separate ledgers for specific models or classes of vehicles to account for different battery cell chemistries or differing quantities of cells in each battery.

(2) *Determination of number of batteries*—(i) *In general.* To establish a compliant-battery ledger for a calendar year, the qualified manufacturer must determine the number of batteries, with respect to new clean vehicles (as described in section 30D(d) and § 1.30D–2(m)) for which the qualified manufacturer anticipates providing a periodic written report during the calendar year, that it knows or reasonably anticipates will be FEOC-compliant, pursuant to the requirements of paragraphs (b) and (c) of this section. The determination is based on the battery components and applicable critical minerals (and associated constituent materials) that are procured or contracted for the calendar year and that are known or reasonably anticipated to be FEOC-compliant battery components or FEOC-compliant applicable critical minerals, as applicable.

(ii) *Upfront review.* The qualified manufacturer must attest to the number of FEOC-compliant batteries determined under paragraph (d)(2)(i) of this section and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with paragraphs (b) and (c) of this section, at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, will review the attestations, certifications, and documentation. Once the IRS determines that the qualified manufacturer provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number is the initial balance in the compliant-battery ledger.

(iii) *Decrease or increase to compliant-battery ledger*—(A) Once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year, and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis, in accordance with paragraph (d)(2)(ii) of this section and the manner provided in the Internal Revenue Bulletin.

(B) The decrease described in paragraph (d)(2)(iii)(A) of this section may decrease the compliant-battery ledger below zero, creating a negative balance in the compliant-battery ledger.

(C) If any decrease described in paragraph (d)(2)(iii)(A) of this section is determined subsequent to the calendar year to which it relates, the decrease must be taken into account in the year in which the change is discovered.

(D) Any remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple compliant-negative battery accounts, any negative balance will first be included in the compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year, the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

(3) *Tracking FEOC-compliant batteries.* The compliant-battery ledger for a calendar year must be updated to track the qualified manufacturer's available FEOC-compliant batteries, by reducing the balance in the ledger as the qualified manufacturer submits periodic written reports reporting the vehicle identification numbers (VINs) of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner provided in the Internal Revenue Bulletin. If the balance in the compliant-battery ledger of the qualified manufacturer for a calendar year is zero or less than zero, the qualified manufacturer may not submit additional periodic written reports with respect to section 30D until the number of available FEOC-compliant batteries is increased as described in paragraph (d)(2)(iii)(A) of this section.

(4) *Reconciliation of battery estimates.* After the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of the qualified manufacturer's FEOC-compliant batteries for such calendar year, including with respect to any changes described in paragraph (d)(2)(iii) of this section, at the time and in the manner provided in the Internal Revenue Bulletin.

(e) *Rule for 2024*—(1) *In general.* For new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in vehicles satisfy the requirements of section 30D(d)(7)(B) and whether batteries contained in the vehicle are FEOC-compliant under the rules of paragraphs (b) and (c) of this section. The qualified manufacturer must make an attestation with respect to such determinations at the time and in the manner provided in the Internal Revenue Bulletin. However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before the date that is 30 days after the date these regulations are finalized, provided that the qualified manufacturer has determined that its supply chains of each battery component with respect such vehicles contain only FEOC-compliant battery components:

(i) For purposes of paragraphs (c)(2) and (3) of this section, the determination of which battery cells or batteries, as applicable, contain FEOC-compliant battery components may be determined without physical tracking;

(ii) For purposes of paragraph (c)(2) of this section, the determination of which batteries contain FEOC-compliant battery cells may be determined without physical tracking (and without the use of a serial number or other identification system); and

(iii) For purposes of paragraph (c)(1) of this section, the determination of which vehicles contain FEOC-compliant batteries may be determined, without physical tracking (and without the use of a serial number or other identification system).

(2) *Determination.* The determination that a qualified manufacturer's supply chains of each battery component contain only FEOC-compliant battery components may be made with respect to specific models or classes of vehicles.

(f) *Inaccurate attestations, certifications or documentation*—(1) *In general.* If the IRS determines, with analytical assistance from the DOE and after review of the attestations, certification and documentation described in paragraph (d) of this section, that a qualified manufacturer has provided attestations, certifications, or documentation that contain inaccurate information, it may take appropriate action as described in paragraphs (f)(2) and (3) of this section. Such action would affect vehicles and qualified manufacturers on a prospective basis.

(2) *Inadvertence.* If the IRS determines that the attestations, certifications or documentation for a specific new clean vehicle contain errors due to inadvertence, the following may be required:

(i) The qualified manufacturer may cure the errors identified, including by a decrease in the compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(ii) If the errors are not cured, in the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirement of section 30D(d), such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit.

(iii) If the errors are not cured, in the case of a new clean vehicle that has not been placed in service and for which the qualified manufacturer has not submitted a periodic written report certifying compliance with the requirement of section 30D(d), the qualified manufacturer may not submit such periodic written report.

(iv) If the errors are not cured, in the case of a new clean vehicle that has been placed in service, the IRS may require a decrease in the qualified manufacturer's compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(3) *Intentional disregard or fraud.* If the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, or documentation requirements or reported information fraudulently or with intentional disregard, the following may be required:

(i) All vehicles of the qualified manufacturer that have not been placed in service may no longer be considered new clean vehicles eligible for the section 30D credit.

(ii) The IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the manufacturer's status as a qualified manufacturer as described in § 1.30D–2(l). The manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the Internal Revenue Bulletin.

(g) *Examples.* The following examples illustrate the rules under paragraphs (b) through (d) of this section:

(1) *Example 1: In general*—(i) *Facts.* M is a manufacturer of new clean vehicles and batteries. M also manufactures or assembles battery cells at its own battery cell production facility. M manufactures a line of new clean vehicles that it anticipates will be placed in service in calendar year 2025. Each vehicle contains one battery, and each battery contains 1,000 battery cells. All battery cells are produced at the same battery cell production facility. The battery cells are not manufactured or assembled by a FEOC. Each battery cell contains 10 mass of battery component A. M has procured or is under contract to procure 10,000,000 mass of battery component A for the battery cell production facility, of which 6,000,000 mass is from supplier 1 and 4,000,000 mass is from supplier 2.

(ii) *Analysis.* (A) Under paragraph (b) of this section, M must conduct due diligence on all battery components and applicable critical minerals (and associated constituent materials) that are contained in the battery to determine whether such components or minerals are FEOC-compliant.

(B) Under paragraph (c)(4) of this section, M must first determine whether the battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant. From its due diligence, M determines that, of the 10,000,000 mass of battery component A, the 6,000,000 mass from supplier 1 is FEOC-compliant while the 4,000,000 mass from supplier 2 is not FEOC-compliant. M determines that all other battery components and applicable critical minerals (and associated constituent materials) of the battery cell are FEOC-compliant, that the battery cell is not manufactured or assembled by a FEOC, and that all battery components (excluding components of the battery cell) of the battery are FEOC-compliant.

(C) Under paragraph (c)(3) of this section, M must determine which battery cells are FEOC-compliant through the physical tracking of the 6,000,000 mass of FEOC-compliant battery component A to determine

which 600,000 (6,000,000/10) battery cells are FEOC-compliant. Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 600,000 FEOC-compliant battery cells to 600 (600,000/1,000) specific batteries.

(D) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 600 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 600 FEOC-compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, approves the number, a compliant-battery ledger is established with a balance of 600 FEOC-compliant batteries.

(E) M manufactures 100 vehicles that it anticipates will be placed in service in 2025, for which it provides periodic written reports providing the VINs of the vehicles and indicating that such vehicles qualify for the section 30D credit. Under paragraph (d)(3) of this section, the compliant-battery ledger is updated to track the number of FEOC-compliant batteries. The number of batteries contained in the compliant-battery ledger is reduced from 600 to 500. Assuming all of the other requirements of section 30D and the regulations thereunder are met, the 100 vehicles are new clean vehicles that qualify for purposes of section 30D.

(2) *Example 2: Rules for third-party suppliers*—(i) *Facts.* The facts are the same as example 1, except that M contracts with BM, a battery manufacturer, for the provision of batteries, and BM contracts with BCS, a battery cell supplier that operates a battery cell production facility, for the provision of battery cells.

(ii) *Analysis.* Under paragraph (c)(5) of this section, BCS may make the determination in paragraphs (c)(2) through (4) of this section, provided that M, BM and BCS perform due diligence as described in paragraph (b) of this section. In addition, BM and BCS must provide M with information sufficient to establish a basis for the determinations under paragraphs (c)(2) through (4) of this section, including information related to due diligence. Finally, BM and BCS must be contractually required to provide the required information to M, and must also be required to inform the qualified manufacturer of any change in supply chains that affects the determinations of FEOC compliance under paragraphs (c)(2) and (4) of this section. The contractual requirement may be satisfied if BM and BCS each have the contractual obligation to M. Alternatively, it may be satisfied if BCS has a contractual obligation to BM and BM, in turn, has a contractual obligation to M.

(3) *Example 3: Applicable critical minerals*—(i) *Facts.* The facts are the same as example 1. In addition, each battery cell contains 20 kilograms (kgs) of applicable critical mineral Z contained in a constituent material. M has procured or is under contract to 20,000,000 kgs of Z for the battery cell production facility, of which 4,000,000 kgs are from supplier 3 and 16,000,000 kgs are from supplier 4.

(ii) *Analysis.* The analysis is the same as in example 1. In addition, from its due diligence, M determines that of the 20,000,000 kg of applicable critical mineral Z, the 4,000,000 kg from supplier 3 is FEOC-compliant while the 16,000,000 kg from supplier 4 is not FEOC-compliant. Under paragraph (c)(3) of this section, M may determine which battery cells are FEOC-compliant through the physical tracking of the 4,000,000 kg of FEOC-compliant applicable critical mineral Z to 200,000 (4,000,000/20) of the battery cells that also contain battery component A, in order to determine which 200,000 battery cells are FEOC-compliant. Alternatively, M may determine which 200,000 battery cells are FEOC-compliant through an allocation of applicable critical mineral Z (but not battery component A) to battery cells, without physical tracking, under paragraph (c)(3)(ii) of this section. Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 200,000 FEOC-compliant battery cells to 200 (200,000/1,000) specific batteries.

(4) *Example 4: Comprehensive example*—(i) *Facts.* M is a manufacturer of new clean vehicles and batteries. M also manufactures or assembles battery cells at its own battery cell production facility. M manufactures a line of new clean vehicles. Each vehicle contains one battery. All battery cells are produced at the same battery cell production facility. The battery cells are not manufactured or assembled by a FEOC. Each battery contains 1,000 NMC 811 battery cells. M anticipates manufacturing 1,000,000 such battery cells for a line of new clean vehicles that it anticipates will be placed in service in calendar year 2025.

(A) Each battery cell contains 1 cathode electrode, 1 anode electrode, 1 separator, and 1 liquid electrolyte. Thus, M procures 1,000,000 of each battery component for the battery cell production facility.

(B) In addition, each NMC 811 cathode incorporates cathode active material (a constituent material) produced using 2.5 kg of applicable critical minerals, consisting of 0.5 kg of lithium hydroxide, 1.6 kg of nickel sulfate, 0.2 kg of cobalt sulfate, and 0.2 kg of manganese sulfate. Thus, M procures 2,500 metric tons (2.5 kg * 1,000,000/1,000) of applicable critical minerals for the battery cell production facility, resulting in purchase agreements for 500 metric tons of lithium, 1,600 metric tons of nickel, 200 metric tons of cobalt, and 200 metric tons of manganese.

(ii) *Analysis.* (A) Under § 1.30D–6(b), M must conduct due diligence on all battery components and applicable critical minerals (and associated constituent materials) that are contained in the battery to determine whether such components or minerals are FEOC-compliant.

(B) Under paragraph (c)(4) of this section, M must first determine whether the battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant. From its due diligence M determines that, of the cathode electrodes, 600,000 are not manufactured by a FEOC and are therefore FEOC-compliant; 400,000 are manufactured by a FEOC and are therefore non-compliant. Of the critical minerals that M has procured, M determines that 250 metric tons of lithium hydroxide, 1,200 metric tons of nickel sulfate, and all of the cobalt sulfate and manganese sulfate are FEOC-compliant. All other battery components and applicable critical minerals of the battery cells are FEOC-compliant.

(C) Under paragraph (c)(3) of this section, M must determine which battery cells are FEOC-compliant through the physical tracking of battery components. M may determine which battery cells are FEOC-compliant through the physical tracking of applicable critical minerals. Alternatively, M may determine which battery cells are FEOC-compliant through an allocation of applicable critical minerals (and associated constituent materials) but not battery components.

(D) Under an allocation-based determination, M has procured 500 metric tons of lithium hydroxide incorporated into a constituent material for the battery cell production facility, of which 50 percent (250/500 metric tons) is FEOC-compliant. M has

procured 1,600 metric tons of nickel sulfate incorporated into a constituent material for the battery cell production facility, of which 75 percent (1,200/1,600 metric tons) is FEOC-compliant. Since the lithium hydroxide is the least compliant applicable critical mineral or component, M allocates the FEOC-compliant lithium hydroxide mass to 50 percent or 500,000 (50 percent * 1,000,000) of the total battery cells, and to battery cells that contain FEOC-compliant cathode electrodes and have been allocated FEOC-compliant nickel sulfate. Under paragraph (c)(2)(ii)(E) of this section, the quantity of FEOC-compliant battery cells is limited by the applicable critical mineral (lithium hydroxide) that has the lowest percentage (50 percent) of FEOC-compliant supply.

(E) Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 500,000 FEOC-compliant battery cells to 500 (500,000/1,000) specific batteries.

(F) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 500 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 500 FEOC-compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, has approved the number, a compliant-battery ledger is established with a balance of 500 FEOC-compliant batteries.

(h) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(i) *Applicability date.* This section applies to new clean vehicles placed in service after December 31, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–26513 Filed 12–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 93

RIN 0937–AA12

Public Health Service Policies on Research Misconduct; Extension of Comment Period

AGENCY: U.S. Department of Health and Human Services (HHS).

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Department of Health and Human Services (HHS), Office of the Secretary, Office of the Assistant Secretary for Health (OASH), Office of Research Integrity (ORI) is extending the comment period by 30 days for the proposed rule entitled ''Public Health Service Policies on Research Misconduct'' published in the **Federal Register** on October 6, 2023. Public comments must be submitted on or before January 4, 2024.

DATES: HHS is extending the comment period by 30 days on the proposed rule published October 6, 2023 at 88 FR 69583. Submit comments on or before January 4, 2024.

ADDRESSES: For efficient management of comments, HHS requests that all comments be submitted electronically to *https://www.regulations.gov* (referred to hereafter as ''*regulations.gov*''). In commenting, please refer to the Regulatory Information Number (RIN) [0937–AA12].

Instructions: Enter the RIN in the search field at *https://www.regulations.gov* and click on ''Search.'' To view the proposed rule, click on the title of the rule. To comment, click on ''Comment'' and follow the instructions. If you are uploading multiple attachments into *regulations.gov*, please number and label all attachments; *https://www.regulations.gov* will not automatically number them. All relevant comments will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section in the Notice of Proposed Rulemaking published at 88 FR 69583.

Docket: For access to the docket to read comments received, please go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sheila Garrity, JD, MPH, MBA, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852; telephone 240–453–8200.

SUPPLEMENTARY INFORMATION: The Agency is extending the deadline to comment on the proposed rule entitled ''Public Health Service Policies on Research Misconduct'' published in the **Federal Register** on October 6, 2023 (88 FR 69583), in response to requests for an extension to allow interested persons additional time to submit comments.

Dated: November 29, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–26590 Filed 12–1–23; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of Proposals for New and Modified Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), Department of Health and Human Services (HHS or the Department).

ACTION: Notification of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notification solicits proposals and recommendations for developing new, or modifying existing, safe harbor provisions under section 1128B(b) of the Social Security Act (the Act), the Federal anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be received no later than 5 p.m. on February 2, 2024.

ADDRESSES: In commenting, please refer to file code OIG–1123–N. Because of staff and resource limitations, we cannot accept comments by fax transmission. You may submit comments in one of two ways (no duplicates, please):

1. *Electronically.* You may submit comments electronically at *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions and refer to file code OIG–1123–N.

2. *By regular, express, or overnight mail.* You may send written comments to the following address: OIG, Regulatory Affairs, HHS, Attention: OIG–1123–N, Room 5628, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201. Please

allow sufficient time for mailed comments to be received before the close of the comment period.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tiana Korley, (240) 935–0776.

SUPPLEMENTARY INFORMATION: Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.*

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b)), the Federal anti-kickback statute, provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives remuneration to induce or reward, among other things, referrals for or purchases of items or services reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act (42 U.S.C. 1320a–7b(f)). The offense is classified as a felony and is punishable by a fine of up to $100,000 and imprisonment for up to 10 years. Violations of the Federal anti-kickback statute also may result in the imposition of civil monetary penalties under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act (31 U.S.C. 3729–33).

Because of the broad reach of the statute, stakeholders expressed concern that some relatively innocuous business arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 (note to section 1128B of the Act; 42 U.S.C. 1320a–7b), which requires the development and promulgation of regulations, the so-called safe harbor provisions, that would specify various payment and business practices that would not be subject to sanctions under the Federal anti-kickback statute, even though they potentially may be capable of inducing referrals of business for which payment may be made under a Federal health care program. Since July 29, 1991, there has been a series of final regulations published in the **Federal Register** establishing safe harbors to protect various payment and business practices.[1] These safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements.'' [2] Health care providers and others may voluntarily seek to comply with the conditions of an applicable safe harbor so that they have the assurance that their payment or business practice will not be subject to sanctions under the Federal anti-kickback statute. The safe harbor regulations promulgated by OIG are found at 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG periodically issues Special Fraud Alerts to give continuing guidance to health care industry stakeholders about practices that OIG considers to be suspect or of particular concern.[3] Special Fraud Alerts encourage industry compliance by giving stakeholders guidance that can be applied to their own practices. OIG Special Fraud Alerts are published in the **Federal Register**, on OIG's website, or both, and are intended for extensive distribution.

In developing Special Fraud Alerts, OIG relies on several sources and consults directly with experts in the subject field including those within OIG, other agencies of HHS, other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of HIPAA, Public Law 104–191, and section 1128D of the Act (42 U.S.C. 1320a–7d), requires the Department to develop and publish an annual notification in the **Federal Register** formally soliciting proposals for developing additional or modifying existing safe harbors to the Federal anti-kickback statute and for issuing Special Fraud Alerts.

In developing or modifying safe harbors under the Federal anti-kickback statute, and in consultation with the Department of Justice, OIG thoroughly reviews the range of factual circumstances that may receive protection by the proposed or modified safe harbor. In doing so, OIG seeks to identify and develop safe harbors that protect beneficial and innocuous arrangements and safeguard Federal health care programs and their beneficiaries from the harms caused by fraud and abuse.

II. Solicitation of New and Modified Safe Harbor Recommendations and Special Fraud Alert Proposals

OIG seeks recommendations regarding the development of additional or modified safe harbor regulations and the issuance of new Special Fraud Alerts. A detailed explanation of justifications for, or empirical data supporting, a suggestion for a new or modified safe harbor or for the issuance of a new Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider various factors in reviewing proposals for additional or modified safe harbor provisions, such as the extent to which the proposals may result in an increase or decrease in:

- access to health care services,
- the quality of health care services,
- patient freedom of choice among health care providers,
- competition among health care providers,
- the cost to Federal health care programs,
- the potential overutilization of health care services, and
- the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will consider other factors including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may influence their decision whether to: (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

[1] *See, e.g.,* Medicare and State Health Care Programs: Fraud and Abuse; Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements, 85 FR 77684 (Dec. 2, 2020).

[2] Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions, 56 FR 35952, 35958 (July 29, 1991).

[3] *See, e.g.,* Special Fraud Alert: OIG Alerts Practitioners To Exercise Caution When Entering Into Arrangements With Purported Telemedicine Companies (July 20, 2022), *https://oig.hhs.gov/documents/root/1045/sfa-telefraud.pdf.*

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether and to what extent the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: November 28, 2023.

Christi A. Grimm,

Inspector General.

[FR Doc. 2023–26526 Filed 12–1–23; 8:45 am]

BILLING CODE 4152–01–P

Notices

Federal Register
Vol. 88, No. 231
Monday, December 4, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–23–0054]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, pursuant to Marketing Order No. 930.

DATES: Comments on this notice must be received by February 2, 2024 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *https://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: *Matthew.Pavone@usda.gov.*

Small businesses may request information on this notice by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Marketing Order No. 930 (7 CFR part 930).

OMB Number: 0581–0177.

Expiration Date of Approval: January 31, 2024.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Marketing order regulations help ensure adequate supplies of high-quality product and adequate returns to producers. Marketing orders are authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). The Secretary of Agriculture oversees these operations and issues regulations recommended by a committee of representatives from the respective commodity industry. The information collection requirements in this request are essential to carry out the intent of the Act and to administer the program, which has operated since 1996.

The Federal marketing order for tart cherries (7 CFR part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The marketing order authorizes volume regulations that provide for a reserve pool in times of heavy cherry supplies. The marketing order also provides for minimum grade and size regulations, and market research and development projects, including paid advertising. These provisions are not currently in use.

The marketing order, and rules and regulations issued thereunder, authorizes the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the marketing order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the Board to assist in carrying out marketing decisions.

The Board has developed 11 forms as a means for persons to file the required and minimum necessary reports with the Board, such as tart cherry inventories, shipments, diversions, and background data. All the information provided is needed to effectively carry out the requirements of the marketing order and fulfill the intent of the Act as expressed in the marketing order. Since this marketing order regulates canned and frozen forms of tart cherries, reporting requirements will be in effect all year.

Nine United States Department of Agriculture (USDA) forms are also included in this request. Tart cherry growers and handlers nominated by their peers to serve as representatives on the Board must submit nomination forms to the USDA. Formal rulemaking amendments to the marketing order must be approved in grower referenda authorized and conducted by the USDA. In addition, USDA may conduct a referendum to determine industry support for continuation of the marketing order. Finally, handlers are asked to sign an agreement to indicate their willingness to comply with the provisions of the marketing order if the order is amended. A standardized background form and combined Acceptance Statement for nominees to multiple committees are included in OMB No. 0581–0177.

The information collected is used only by authorized representatives of the AMS's regional and headquarters staff, and authorized Board employees. Authorized Board employees and the

industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .227 hours per response.

Respondents: Tart cherry growers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, and public members.

Estimated Number of Respondents: 642.

Estimated Number of Responses: 3,270.

Estimated Number of Responses per Respondent: 5.09.

Estimated Total Annual Burden on Respondents: 741 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and be sent to AMS in care of the Docket Clerk at the address above. All comments received within the provided comment period will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

AMS is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A 60-day comment period is provided to allow interested persons to respond to the notice.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–26507 Filed 12–1–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 3, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Indigenous Animals Harvesting and Meat Processing Grant Program.

OMB Control Number: 0570–NEW.

Summary of Collection: The Indigenous Animals Harvesting and Meat Processing Grant Program was authorized by Section 1001 of the American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2), which assists U.S. states and territories to build resilience in the middle of the supply chain and strengthen local and regional food systems. The Rural Business-Cooperative Service (RBCS) administers this program, an agency within USDA Rural Development, in partnership with the Agricultural Marketing Service (AMS) and in consultation with the Office of Tribal Relations (OTR).

Indigenous Animals Grants are part of the broader Biden-Harris Administration $1 billion investment to help expand independent processing capacity while also increasing competitiveness and equity in the food system. This administration has supported investment in tribal meat processing supply chains, including through the provision of direct technical assistance to Indian Country. This grant program seeks to improve the viability of tribal nations' food sovereignty initiatives and supply chain resiliency by developing and expanding animal protein processing activities related to indigenous animals. Additionally, this grant program is being made pursuant to the United States' government-to-government relationship with Indian tribes to further their self-governance goals of maintaining and improving food and agriculture supply chain resiliency.

Need and Use of the Information: The information provided will be used to determine applicant and project eligibility and to ensure that projects meet program goals and are for authorized purposes. Applicants that receive grant awards are also required to execute a Financial Assistance Agreement with the Agency and provide financial and project performance reports to the Agency to ensure that projects are being completed in a timely manner.

Description of Respondents: State, local, and Tribal governments.

Number of Respondents: 50.

Frequency of Responses: Annually.

Total Burden Hours: 2,328.

Rural Business-Cooperative Service

Title: 7 CFR 1951—Servicing and Collection Common Forms.

OMB Control Number: 0570–NEW.

Summary of Collection: The Rural Housing Service (RHS), Rural Business and Cooperative Service (RBCS) and Rural Utilities service (RUS) agencies within the Rural Development mission area, hereinafter referred to as Agency, is the credit Agency for agriculture and rural development for the United States Department of Agriculture. The Agency offers loans, grants and loan guarantees to help create jobs and support economic development and essential services such as housing; health care; first responder services and equipment; and water, electric and communications infrastructure.

The RHS is authorized under various sections of title V of the Housing Act of 1949, as amended, to provide financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals in rural areas. The Consolidated Farm and Rural Development Act, as amended, authorizes the credit programs of the RHS, RBCS and RUS to provide financial assistance for essential community facilities such as construction of community facilities and water and waste systems; and the improvement, development, and financing of businesses, industries, and employment.

Need and Use of the Information: The applicant/borrower, contractor, subcontractor, material supplier, equipment lessor, architect, engineer, manufacturer or sponsor of manufactured housing collects the required information. Rural Development provides forms and/or guidelines to assist in the collection and submission of information. The information is usually submitted via hand delivery or U.S. Postal Service to the Rural Development Field Office, although receipt through email or USDA Service Center's eForms website is becoming more common. Occasionally, information is submitted directly to the Rural Development State Office.

The information is used by Rural Development to determine whether a loan/grant can be approved, to ensure that Rural Development has adequate security for the loans financed, to provide for sound construction and development work and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the loan/grant and to monitor the prudent use of Federal funds.

Description of Respondents: Individuals and households.

Number of Respondents: 1.

Frequency of Responses: Annually.

Total Burden Hours: 6.

Rural Business-Cooperative Service

Title: 1980 Guaranteed Loan Common Forms Package.

OMB Control Number: 0570–NEW.

Summary of Collection: The Rural Housing Service (RHS), Rural Business and Cooperative Service (RBCS) and Rural Utilities service (RUS) agencies within the Rural Development mission area, hereinafter referred to as Agency, is the credit Agency for agriculture and rural development for the United States Department of Agriculture. The Agency offers loans, grants and loan guarantees to help create jobs and support economic development and essential services such as housing; health care; first responder services and equipment; and water, electric and communications infrastructure.

The Authorities that allow the Rural Housing Service (RHS), Rural Business and Cooperative Service (RBCS) and Rural Utilities service (RUS), Agencies within Rural Development (RD) are as follows:

The RHS is authorized under various sections of Title V of the Housing Act of 1949, as amended, to provide financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals in rural areas. The Consolidated Farm and Rural Development Act, as amended, authorizes the credit programs of the RHS, RBCS and RUS to provide financial assistance for essential community facilities such as construction of community facilities and water and waste systems; and the improvement, development, and financing of businesses, industries, and employment.

Need and Use of the Information: The applicant/borrower, contractor, subcontractor, material supplier, equipment lessor, architect, engineer, manufacturer or sponsor of manufactured housing collects the required information. Rural Development provides forms and/or guidelines to assist in the collection and submission of information. The information is usually submitted via hand delivery or U.S. Postal Service to the Rural Development Field Office, although receipt through email or USDA Service Center's eForms website is becoming more common. Occasionally, information is submitted directly to the Rural Development State Office.

The information is used by Rural Development to determine whether a loan/grant can be approved, to ensure that Rural Development has adequate security for the loans financed, to provide for sound construction and development work and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the loan/grant and to monitor the prudent use of Federal funds.

Description of Respondents: Individuals and households.

Number of Respondents: 1.

Frequency of Responses: Annually.

Total Burden Hours: 2.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–26519 Filed 12–1–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Recordkeeping of D–SNAP Benefit Issuance and Commodity Distribution for Disaster Relief

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an extension of a currently approved collection. This information collection addresses the recordkeeping burden associated with forms FNS–292A (*Report of Commodity Distribution for Disaster Relief*) and FNS–292B (*Report of Disaster Supplemental Nutrition Assistance Benefit Issuance*).

DATES: Written comments must be received on or before February 2, 2024.

ADDRESSES: The Food and Nutrition Services, USDA, invites interested persons to submit written comments.

- Preferred Method: Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.
- Regarding form FNS–292A, comments may be sent to Polly Fairfield, Chief, Food Distribution Policy Branch, Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314, or via email to *polly.fairfield@usda.gov*.
- Regarding form FNS–292B, comments may be sent to John ''David'' Noble, Chief, Program Modernization and Integration Branch, Program Development Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314, or via email to *john.noble@usda.gov*.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this information collection should be directed to David Noble, (703) 305–4382 or to Polly Fairfield, (703) 305–2746.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Report of Disaster Supplemental Nutrition Assistance Program Benefit Issuances and Report of Commodity Distribution for Disaster Relief.

Form Number: FNS–292A and FNS–292B.

OMB Number: 0584–0037.

Expiration Date: 5/31/2024.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection pertains only to the recordkeeping burden associated with forms FNS–292A and FNS–292B. The reporting burden associated with these forms is approved under OMB No. 0584–0594 (Food Program Reporting System; expiration date: 9/30/2026). The Food and Nutrition Service (FNS) utilizes forms FNS–292A and FNS–292B to collect information not otherwise available on the extent of FNS-funded disaster relief operations. Following OMB approval of this extension, this information collection will be merged with OMB Control # 0584–0336 (expiration 11/30/2025) to streamline burden estimates related to disasters into one information collection.

Form FNS–292A, *Report of Commodity Distribution for Disaster Relief,* is used by State distributing agencies, including Indian Tribal Organizations administering the Food Distribution Program on Indian Reservations (FDPIR), to provide a summary report to FNS following termination of disaster commodity assistance and to request replacement of donated foods distributed during the disaster or situation of distress. Donated food distribution in disaster situations is authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); Section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1); Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); and by sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Program implementing regulations are contained in part 250 of title 7 of the Code of Federal Regulations (CFR). In accordance with 7 CFR 250.69(f) and 7 CFR 250.70(f), State distributing agencies shall provide a summary report to FNS within 45 days following termination of the disaster assistance and maintain records of these reports and other information relating to disasters.

Form FNS–292B, *Report of Disaster Supplemental Nutrition Assistance Benefit Issuance,* is used by State agencies to report to FNS the number of households and persons certified for Disaster Supplemental Nutrition Assistance Program (D–SNAP) benefits as well as the value of benefits issued. D–SNAP is a separate program from the Supplemental Nutrition Assistance Program (SNAP) and is authorized by sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) and the temporary emergency provisions contained in section 5 of the Food and Nutrition Act of 2008, and in 7 CFR part 280 of the SNAP regulations. State agencies may request FNS approval to operate a D–SNAP to address the temporary food needs of certain households in affected areas following a disaster after certain criteria is met. If approved to operate D–SNAP by FNS, a State agency must submit its final FNS–292B to FNS within 45 days of terminating D–SNAP operations, and maintain records of this report.

The number of disasters that will result in a State requesting to operate a FNS disaster food relief activity in a given year is impossible to predict. However, 55 is the maximum number of State distributing agencies that have ever utilized disaster commodity assistance in a given year. Accordingly, FNS is estimating this burden by assuming that, at maximum, 55 State distributing agency will distribute donated foods during a disaster or situation of distress once per year. In the case of State SNAP agencies, FNS is estimating this burden assuming that each State SNAP agency will request and be approved to operate D–SNAP once per year.

Affected Public: State agencies that administer FNS disaster food relief activities.

Estimated Number of Respondents: 55 Food Distribution State agencies for Form FNS–292A; 53 State SNAP agencies for Form FNS–292B.

Estimated Number of Responses per Respondent: 1 recordkeeping response per State distributing agency; 1 recordkeeping responses per State SNAP agency. 1.964 responses per respondent.

Estimated Total Annual Responses: 108.

Estimated Time per Response: Recordkeeping burden for the State agencies is estimated to be 7.5 minutes (.125 hours) per form (FNS–292A and FNS–292B) per respondent.

Estimated Total Annual Burden on Respondents: Recordkeeping burden for the State agencies is estimated to be 7.5 minutes (.125 hours) per form (FNS–292A and FNS–292B) per respondent for a total of 14 hours (13.5 rounded up).

Respondent	Estimated number of recordkeepers	Number of records per recordkeeper	Total annual records	Estimated average number of hours per record	Estimated total hours
Record Keeping Burden					
Food Distribution State Agencies—Commodity Distribution Form FNS–292A.	55	1.00	55	0.125	6.875.
State SNAP Agencies—D–SNAP Benefit Issuance Form FNS–292B.	53	1.00	53	0.125	6.625.
Total Record Keeping Burden	55	1.964	108	0.1250	14 (13.5 rounded up).

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–26561 Filed 12–1–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–23–BUSINESS–0020]

Notice of Solicitation of Applications for the Rural Business Development Grant Programs for Fiscal Year 2024

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency) invites the submission of applications for grants under the Rural Business Development Grant (RBDG) Program for fiscal year (FY) 2024, subject to the availability of funding. This notice is being issued prior to passage of a FY 2024 Appropriations Act in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2024. Based on FY 2023 appropriated funding, the Agency estimates that approximately $37,000,000 will be available for FY 2024. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Complete applications may be submitted in paper or electronic format and must be received by 4:30 p.m. local time on February 28, 2024, in the United States Department of Agriculture (USDA) Rural Development (RD) State Office for the State where the project is located. A list of the USDA RD State Offices can be found at: *https://www.rd.usda.gov/about-rd/state-offices*.

ADDRESSES: This funding announcement will also be announced on *www.Grants.gov*. Applications must be submitted to the USDA RD State Office for the State where the project is located. For projects involving multiple states, the application must be filed in the RD State Office where the Applicant is located. Applicants are encouraged to contact their respective RD State Office for an email contact to submit an electronic application prior to the submission deadline date. A list of the USDA RD State Office contacts can be found at: *https://www.rd.usda.gov/about-rd/state-offices*.

FOR FURTHER INFORMATION CONTACT: Lisa Sharp at *lisa.sharp@usda.gov,* or Cindy Mason at *cindy.mason@usda.gov,* Program Management Division, Rural Business-Cooperative Service, USDA, 1400 Independence Avenue SW, MS 3226, Room 5160—South, Washington, DC 20250–3226, or call (202) 720–1400. For further information on submitting program applications under this notice, please contact the USDA RD State Office in the State where the applicant's headquarters is located. A list of RD State Office contacts is provided at the following link: *https://www.rd.usda.gov/about-rd/state-offices*.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: Rural Business-Cooperative Service (RBCS).

Funding Opportunity Title: Rural Business Development Grant Program (RBDG).

Announcement Type: Notice of Solicitation Announcement (NOSA).

Funding Opportunity Number: RDBCP–RBDG–2024.

Assistance Listing: 10.351.

Dates: Complete applications may be submitted in paper or electronic format and must be received by 4:30 p.m. local time on February 28, 2024, in the United States Department of Agriculture (USDA) Rural Development (RD) State Office for the State where the project is located. A list of the USDA RD State Offices can be found at: *https://www.rd.usda.gov/about-rd/state-offices*.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. *Purpose of the Program.* The purpose of the program is to promote economic development and job creation projects through the awarding of grant funds to eligible entities. Applications will compete in two separate categories, business opportunity grants and business enterprise grants, for use in funding various business and community projects that serve rural areas.

Business opportunity projects must be in compliance with eligible uses as stated in 7 CFR 4280.417(a)(1) that include the establishment of business support centers or providing funds for job training and leadership development in rural areas. Business opportunity projects must be consistent with any tribal, local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area, and consistent with any RD State Strategic Plan.

Business enterprise projects must be in compliance with eligible uses as stated in 7 CFR 4280.417(a)(2) and are to be used to finance or develop small and emerging businesses in rural areas. Enterprise grant purposes include projects for the acquisition and development of land, access streets and roads, the conversion or modernization of buildings, capitalization of revolving loan funds and the purchase of machinery and equipment for businesses located in a rural area.

2. *Statutory and Regulatory Authority.*

(a) RBDG Program: The RBDG Program is authorized under 7 U.S.C. 1932(c) (*https://www.govinfo.gov/link/uscode/7/1932*) and implemented by 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*). Assistance provided under the RBDG Program will be made to eligible entities and will be used for funding various business opportunity projects and business enterprise projects, as applicable, that serve Rural Areas.

(b) Set-Aside Funding: The Consolidated Appropriations Act, 2023 (Pub. L. 117–328), designated funding for Federally-Recognized Native American Tribes, Rural Empowerment Zone/Enterprise Communities/Rural Economic Area Partnerships, projects in Persistent Poverty Counties (as discussed below), Native American Persistent Poverty areas and for Strategic Economic and Community Development (SECD) projects in FY 2023.

Set-aside funding may or may not be made available through appropriations in FY 2024 where continued emphasis is given to financial assistance for projects located in these areas. For funding made available in FY 2023, eligible applicants for the Native American and Rural Empowerment Zone/Enterprise Communities/Rural Economic Area Partnership set-aside funds were required to demonstrate that

at least 75 percent of the benefits of an approved grant would assist beneficiaries in the designated areas. For funding made available in FY 2023, eligible applicants for the Persistent Poverty Counties, Native American Persistent Poverty areas, and the SECD set-aside funds were required to demonstrate that 100 percent of the benefits of an approved grant would assist beneficiaries in the designated areas. The completed application deadline for these set-aside funds, if available, is consistent with the RBDG application deadline date of February 28, 2024. Applicants for set-aside funds must indicate that they are applying for set-aside funds and may not submit a duplicate application for regular RBDG funds. If funding for an anticipated set-aside program is not appropriated in FY 2024, or if any eligible applications for set-aside funding are not funded due to insufficient funds, such applications will be allowed to compete for available FY 2024 regular RBDG funds in the State where the project is located.

(c) *Persistent Poverty Funding:* The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) provided designated funding for projects in Persistent Poverty Counties. ''Persistent Poverty Counties'' as defined in Section 736 is ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States''. Another provision in Section 736 expanded the eligible population in Persistent Poverty Counties to include any county seat of such a Persistent Poverty County that had a population that did not exceed the authorized population limit by more than 10 percent. This provision expanded the current 50,000 population limit to 55,000 for only county seats located in Persistent Poverty Counties. Therefore, beneficiaries of technical assistance services located in county seats of Persistent Poverty Counties with populations up to 55,000 (per the 2020 Census) were deemed eligible. Comparable statutory provisions may or may not be included in the appropriations act for FY 2024.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 4280.403 (eCFR :: 7 CFR 4280.403—Definitions.).

4. *Application of Awards.* Awards under the RBDG Program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*). The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*), and as indicated in this notice. The Agency advises all interested parties that the applicant bears the full burden of preparing and submitting an application in response to this notice whether or not funding is appropriated for this program in FY 2024.

B. Federal Award Information

Type of Awards: Grants.

Fiscal Year Funds: FY 2024.

Available Funds: Dependent upon FY 2024 appropriations. Funding is anticipated to be approximately $37 million based on FY 2023 amounts. RBCS may at its discretion, increase the total level of funding available in this funding round [or in any category in this funding round] from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: No Minimum or Maximum.

Anticipated Award Dates: Set-Aside awards, if applicable: May 31, 2024. Regular awards: August 31, 2024.

Performance Period: June 1, 2024, through September 30, 2026.

Renewal or Supplemental Awards: None.

Type of Financial Assistance Instrument: Grant Agreement.

C. Eligibility Information

1. *Eligible Applicants.* Grants may be made to a Public Body/Government Entity, an Indian Tribe, or a Nonprofit entity primarily serving rural areas. In accordance with 7 CFR 4280.416(d) (*https://www.ecfr.gov/current/title-7/section-4280.416#p-4280.416(d)*), applicants that are not delinquent on any Federal debt or not otherwise disqualified from participation in these Programs are eligible to apply. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended at the time of application and prior to the awarding of grant funds.

2. *Cost Sharing or Matching.* There are no cost sharing or matching requirements associated with this grant. Matching funds are not required for eligibility purposes, however, additional priority points may be awarded for leveraging per 7 CFR 4280.435 (a).

3. *Other.* Grant funds may be used for projects identified in 7 CFR 4280.417(a) (eCFR: 7 CFR 4280.417—Project eligibility.) as either a business opportunity type grant or a business enterprise type grant.

D. Application and Submission Information

1. *Address to Request Application Package.* Entities wishing to apply for financial assistance should contact the USDA RD State Office provided in the **ADDRESSES** section of this notice to obtain copies of the application package.

2. *Content and Form of Application Submission.*

(a) The applicant documentation and forms needed for a complete application are located in 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*), a copy of which will be provided to any interested applicant making a request to a USDA RD State Office for the State where the project is located. A list of the USDA RD State Offices can be found at: *https://www.rd.usda.gov/about-rd/state-offices.*

(b) The Agency requires information to make an eligibility determination through applications that must include the items identified in 7 CFR 4280.427 (*https://www.ecfr.gov/current/title-7/section-4280.427*). The written narrative outlined in 7 CFR 4280.427(d) should include the following for Other Information:

(1) Please note that no assistance or funding can be provided to hemp producers or processors unless they have a valid license issued from an approved State, Tribal or Federal plan as per section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334 (*https://www.govinfo.gov/app/details/PLAW-115publ334*). Verification of valid hemp licenses will occur at the time of award; and

(2) Other information the Agency may request to assist in making a grant award determination.

Each selection priority criterion outlined in 7 CFR 4280.427 (*https://www.ecfr.gov/current/title-7/section-4280.427*) must be addressed in the application. Failure to address any of the criterion will result in a zero-point score for that criterion and will impact the overall evaluation of the application.

(c) The application must be submitted in one package. The single package should be well organized and include a table of contents, if appropriate. There are no specific limitations on number of pages, font size and type face, margins, paper size, and the sequence or assembly requirements other than those described in 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*).

(d) An original copy of the application must be filed with the RD State Office

for the State where the project is located. For projects involving multiple states, the application must be filed in the RD State Office where the Applicant is located.

(e) The component pieces of this application require original signatures on the original application. Any form that requires an original signature but is signed electronically in the application submission must be signed in ink by the authorized person prior to the disbursement of funds.

(f) RBDG grants must conform with the environmental policies and procedures of 7 CFR part 1970 (eCFR :: 7 CFR part 1970—Environmental Policies and Procedures).

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in SAM before submitting its application in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25/subpart-A/section-25.110*).

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.*

(a) *Application Technical Assistance Deadline Date.* Prior to official submission of grant applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to February 10, 2024. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility.

(b) *Application Deadline Date.* Applications (paper or electronic format) must be submitted to the appropriate RD State Office no later than 4:30 p.m. (local time) on February 28, 2024. If completed applications are not received by the deadline date, the application will neither be reviewed nor considered for funding under any circumstances. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your state has not established a SPOC, you may submit your application directly to the Agency. Applications from Federally recognized Indian Tribes are not subject to this requirement.

6. *Funding Restrictions.*

(a) Indirect costs will be permitted in accordance with applicable law and in accordance with 2 CFR part 200 (*https://www.ecfr.gov/current/title-2/part-200*). Pre-Federal award costs will only be permitted with prior written approval by the Agency.

(b) In accordance with 7 CFR 4280.421 (eCFR :: 7 CFR 4280.421—Term requirement.), a project must reasonably be expected to be completed within one (1) full year after it has begun.

7. *Other Submission Requirements.* Applicants may submit applications in hard copy or electronic format as previously indicated in the Application and Submission Information section of this notice. If the applicant wishes to hand deliver its application, the addresses for these deliveries are located in the **ADDRESSES** section of this notice.

E. Application Review Information

1. *Criteria.*

(a) The Agency will review each application for assistance in accordance with the priorities established in 7 CFR 4280.435. The Agency will assign each application a priority rating and will select applications for funding based on the priority ratings and the total funds available to the program. Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

(b) The Agency will use the criteria in 7 CFR 4280.435 and this notice to score applications for purposes identified under 7 CFR 4280.417(a)(1) and (2).

Leveraging. In addition to the requirements provided in 7 CFR 4280.435(a), and to the extent that an applicant contributes leveraged funds to a project, the application must contain a firm commitment in writing of other funding for the project or points will not be awarded to the application for leveraging.

Discretionary points. Either the State Director or Administrator may assign up to 50 discretionary points to an application. Assignment of discretionary points must include a written justification. Permissible justifications are geographic distribution of funds, special Secretary of Agriculture initiatives such as Priority Communities, or a state's strategic goals. Discretionary points may only be assigned to initial grants. However, in the case where two projects have the same score, the State Director may add one point to the project that best fits the State's strategic plan regardless of whether the project is an initial or subsequent grant.

(c) The following are examples of special Secretary of Agriculture initiatives that can support obtaining discretionary points.

(1) Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure. Applicant would receive priority points if the project is located in or is serving a rural community whose economic well-being ranks in the most distressed tier (distress score of 80 or higher) of the Distressed Communities Index using the Distressed Communities Look-Up Map available at *https://www.rd.usda.gov/priority-points.*

(2) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. Using the Social Vulnerability Index (SVI) Look-Up Map (available at *https://www.rd.usda.gov/priority-points*), an applicant would receive priority points if the project is:

- Located in or serving a community with a score 0.75 or above on the SVI;
- Is a Federally recognized tribe, including Tribal instrumentalities and entities that are wholly owned by Tribes; or
- Is a project where at least 50 percent of the project beneficiaries are members of Federally Recognized Tribes and non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes that the applicant is proposing to serve.

(3) Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities. Using the Disadvantaged Community and Energy Community Look-Up Map (available at *https://www.rd.usda.gov/priority-points*), applicants can receive priority points in three ways:

- If the project is located in or serves a *Disadvantaged Community* as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality (CEQ), or
- If the project is located in or serves an *Energy Community* as defined by the Inflation Reduction Act (IRA).
- If applicants demonstrate through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

See the website, *https://www.rd.usda.gov/priority-points,* for options.

The Agency will assign each application a priority rating based on the total score and will select applications for funding based on the priority ratings and the total funds available to the program for opportunity-type projects and enterprise-type projects.

2. *Review and Selection Process.*

The RD State Offices will review applications to determine if they are eligible for assistance based on requirements contained in 7 CFR 4280.416 (*https://www.ecfr.gov/current/title-7/section-4280.416*) and 7 CFR 4280.417 (*https://www.ecfr.gov/current/title-7/section-4280.417*). Funding of projects is subject to the availability of funds and Applicant's satisfactory submission of the items required by 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*) and this notice, in addition to any conditions specifically outlined in any issued USDA RD Letter of Conditions if available funds are to be awarded. The agency reserves the right to offer the applicant less than the amount of grant funding requested.

The Agency will score each application based on the information contained in the application and its supporting information. All applications submitted for funding must be in one package and contain sufficient information to permit the Agency to complete a thorough priority rating. Agency employees may not consider any information that is not provided by the applicant in writing for scoring purposes. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

Applications for set-aside funds, if available, will compete at the National Office in their respective categories. Applications for regular RBDG projects will compete at the state level in their respective category, business opportunity grants or business enterprise grants, for funding made available through RD State allocated funds. Applications will be reviewed, prioritized by score, and funded by ranking each project in highest to lowest score order until available funds are exhausted. If funds are exhausted at the state level, each State's highest scoring unfunded business enterprise project will have the opportunity to compete for funding through a final national competition.

The Agency will notify eligible applicants in writing if RBDG funds are not available. The applicant is permitted to respond in writing that they wish their application to be reconsidered in the next FY. The applicant may provide additional updated information to the Agency prior to the next FY's application deadline for their project.

The Agency will notify eligible applicants in writing if set-aside funds are not available. Applications that are eligible for set-aside funds but are unfunded due to the unavailability of funds will be allowed to compete for available FY 2024 regular RBDG funds in the State where the project is located. For projects involving multiple states, the application will be returned to the RD State Office where the Applicant is located and will compete for funds in that State. The Agency will notify eligible applicants in writing if their application will not be funded in FY 2024 due to insufficient funds in the set-aside and regular RBDG programs.

F. Federal Award Administration Information

1. *Federal Award Notices.*

Successful applicants will receive notification for funding from the USDA RD State Office. Applicants must comply with all applicable statutes and regulations before the grant award can be approved and funded. If an application is withdrawn by the applicant, it can be resubmitted later and will be evaluated as a new application in the period submitted.

2. *Administrative and National Policy Requirements.*

Additional requirements that apply to grantees selected for this Program can be found in 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*), and in the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, 421. Awards are subject to USDA grant regulations at 2 CFR part 400 (*https://www.ecfr.gov/current/title-2/part-400*) which incorporates the Office of Management and Budget (OMB) regulations at 2 CFR part 200 (*https://www.ecfr.gov/current/title-2/part-200*).

All successful applicants will be notified by letter which will include a Letter of Conditions and a Letter of Intent to Meet Conditions. This letter is not an authorization to begin performance, but it is a notification that grant funds may be awarded subject to the applicant meeting certain specified conditions. The grant will be considered officially awarded when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the project. If the applicant wishes to consider beginning their project performance prior to the grant being officially closed, all pre-award costs must be approved in writing and in advance by the Agency.

Additional requirements that apply to grantees selected for these programs can be found in 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*), the Grants and Agreements regulations of the USDA codified in 2 CFR Chapter IV (*https://www.ecfr.gov/current/title-2/subtitle-B/chapter-IV*), and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*)). The applicant will be required to have the necessary processes and systems in place to comply with the Federal

Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282–Federal Funding Accountability and Transparency Act of 2006—Content Details—(*govinfo.gov*)) reporting requirements (see 2 CFR 170.200(b) (*https://www.ecfr.gov/current/title-2/section-170.200#p-170.200(b)*), unless the recipient is exempt under 2 CFR 170.110(b) (*https://www.ecfr.gov/current/title-2/section-170.110#p-170.110(b)*)).

The following additional requirements apply to grantees selected for these programs:

(a) Form RD 4280–2 ''Rural Business-Cooperative Service Financial Assistance Agreement.''

(b) Letter of Conditions.

(c) Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(e) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(f) Grantees will use Form SF 270, ''Request for Advance or Reimbursement'' when requesting grant funds from the Agency.

3. *Reporting.*

(a) A Financial Status Report and a Project Performance Activity Report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal FY. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The grantee will complete the project within the total time available to it in accordance with the Scope of Work and any necessary modifications thereof prepared by the grantee and approved by the Agency. A final Project Performance Report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the RBDG grant, if applicable. The Project Performance Reports must include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period.

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

(3) Objectives and timetable established for the next reporting period.

(4) Any special reporting requirements, such as jobs supported and created, businesses assisted, or economic development which results in improvements in median household incomes, and any other specific requirements, will be placed in the reporting section of the Letter of Conditions.

(5) Within 90 days after the conclusion of the project, the grantee will provide a final Project Evaluation Report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the grantee may request reimbursement on a monthly basis, the last 3 months of reimbursements will be withheld until the final Project Evaluation, Project Performance, and Financial Status Reports are received and approved by the Agency.

(b) In addition to any reports required by 2 CFR part 200 (*https://www.ecfr.gov/current/title-2/part-200*) and 2 CFR chapter IV (*https://www.ecfr.gov/current/title-2/subtitle-B/chapter-IV*), the grantee must provide reports as required by 7 CFR part 4280, subpart E (*https://www.ecfr.gov/current/title-7/part-4280/subpart-E*).

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA RD State Office provided in the **ADDRESSES** section of this notice.

H. Build America, Buy America

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58). Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.* Pursuant to USDA's ''*Tribal Consultation Waiver in the Public Interest for Indian Tribes*,'' approved on July 14, 2023, and effective until July 13, 2024, Tribal applicants will not be subject to the requirements of BABAA described in this notice.

I. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0070.

2. *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970. RBCS will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist RBCS with this determination.

3. *Federal Funding Accountability and Transparency Act.* All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. *Civil Rights Act.* All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and Section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

5. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint

filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2023–26562 Filed 12–1–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness Renewal

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, with the concurrence of the General Services Administration, renewed the Advisory Committee on Supply Chain Competitiveness.

DATES: The charter for the Advisory Committee on Supply Chain Competitiveness was renewed on November 9, 2023.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Designated Federal Officer, Room 11004, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION: The Department of Commerce, with the concurrence of the General Services Administration, renewed the Advisory Committee on Supply Chain Competitiveness. The effective date of the charter renewal is November 9, 2023. This Notice is published in accordance with the Federal Advisory Committee Act (FACA). It has been determined that renewal of the Committee is necessary and in the public interest. The Committee was established pursuant to Commerce's authority under 15 U.S.C. 1512, in accordance with the FACA, and with the concurrence of the General Services Administration. The Committee provides advice to the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and to provide advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The total number of members that may serve on the Committee is a maximum of 45.

Dated: November 29, 2023.

Heather Sykes,

Director, Office of Supply Chain Services.

[FR Doc. 2023–26536 Filed 12–1–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Prohibited Species Donation (PSD) Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 2, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0316 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Megan Mackey, Fishery Management Specialist, NOAA, (907) 586–7228, *megan.mackey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS) Alaska Regional Office is requesting extension of a currently approved information collection for the Prohibited Species Donation Program (PSD Program).

Retention of incidentally caught prohibited species is prohibited in the groundfish fisheries except for salmon and halibut for the purposes of the PSD Program. The PSD Program allows participating seafood vessels and processors to retain salmon and halibut bycatch for distribution to economically disadvantaged individuals. Regulations at 50 CFR 679.26 authorize the voluntary distribution of salmon and halibut taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor.

The Administrator, Alaska Region, NMFS (Regional Administrator) may select one or more tax-exempt organizations to be authorized distributors, as defined at § 679.2. An organization seeking to distribute salmon bycatch and halibut bycatch under the PSD Program must provide the Regional Administrator with the information listed at 50 CFR 679.26(b)(1).

NMFS uses the information provided by an applicant to determine the organization's nonprofit status. In addition, the application provides information about the ability of the organization to arrange for and distribute donated salmon and halibut as a high quality food product.

II. Method of Collection

There is no form for this application. The application to become a PSD distributor, and any changes or updates to the application, are submitted to NMFS as an email attachment.

III. Data

OMB Control Number: 0648–0316.
Form Number(s): None.
Type of Review: Regular submission (extension of a current information collection).
Affected Public: Not-for-profit institutions.
Estimated Number of Respondents: 1.
Estimated Time per Response: Application to be a NMFS Authorized Distributor, 17 hours.
Estimated Total Annual Burden Hours: 17 hours.
Estimated Total Annual Cost to Public: $0 in recordkeeping and reporting costs.
Respondent's Obligation: Required to obtain or retain benefits.
Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–26567 Filed 12–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD556]

Research Track Assessment for Black Sea Bass

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing Black Sea Bass. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from December 5, 2023–December 7, 2023. The meeting will conclude on December 7, 2023 at 4 p.m. eastern standard time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES:

The meeting will be held via *WebEx: https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=m6913d2c21375690b5235caba3fbd2829.*

Meeting number (access code): 2760 957 5065.

Meeting password: HMzTG9qhd73.

FOR FURTHER INFORMATION CONTACT: Michele Traver, 508–495–2195; *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments.*

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

Time	Topic	Presenter(s)	Notes
Tuesday, December 5, 2023			
9 a.m.–9:15 a.m	Welcome/Logistics Introductions/ Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead; Larry Alade, Acting PopDy Branch Chief; Olaf Jensen, Panel Chair.	
9:15 a.m.–9:45 a.m	Introduction/Executive Summary	Anna Mercer (WG chair)/Kiersten Curti (assessment lead).	Biology, movement, management overview, flag areas of major progress in the Research Track (new data sources, indices, M exploration, discard mortality exploration, new model, *etc.*).

Time	Topic	Presenter(s)	Notes
9:45 a.m.–10:30 a.m	Term of Reference (TOR) #2	Kiersten Curti	Commercial catch, Commercial Fisheries Research Foundation Research Fleet data.
10:30 a.m.–10:45 a.m	Break.		
10:45 a.m.–11:30 a.m	TOR #2 cont	Kiersten Curti, Sam Truesdell, Julia Beaty.	Recreational catch Discard Mortality.
11:30 a.m.–12 p.m	Discussion/Summary	Review Panel.	
12 p.m.–12:15 p.m	Public Comment	Public.	
12:15 p.m.–1:15 p.m	Lunch.		
1:15 p.m.–2:45 p.m	TOR #3	Kiersten Curti, Sam Truesdell, Alex Hansell.	NEFSC Bottom Trawl Survey, North-East Area Monitoring and Assessment Program, State Surveys, Ventless Trap Survey, Vector Autoregressive Spatio Temporal indices.
2:45 p.m.–3 p.m	Break.		
3 p.m.–3:45 p.m	TOR #3	Jeff Brust, Andy Jones	Recreational CPA and Commercial Catch Per Unit Effort.
3:45 p.m.–4 p.m	Discussion/Summary	Review Panel.	
4 p.m.–4:15 p.m	Public Comment	Public.	
4:15 p.m	Adjourn.		
Wednesday, December 6, 2023			
9 a.m.–9:05 a.m	Welcome/Logistics Introductions/ Agenda.	Michele Traver, Assessment Process Lead; Olaf Jensen, Panel Chair.	
9:05 a.m.–10:30 a.m	TOR #1	Scott Large, Kiersten Curti, Jason McNamee, Anna Mercer.	Time varying growth and maturity, Spatiotemporal modeling, Ecosystem indicators, Trophic ecology, Natural Mortality, Stakeholder engagement.
10:30 a.m.–10:45 a.m	Break.		
10:45 a.m.–12:45 p.m	TOR #4	Tim Miller, Kiersten Curti	Woods Hole Assessment Model.
12:45 p.m.–1:45 p.m	Lunch.		
1:45 p.m.–2:45 p.m	TOR #5	Tim Miller, Kiersten Curti	Reference Points.
2:45 p.m.–3:30 p.m	TOR #6	Tim Miller, Kiersten Curti	Projections.
3:30 p.m.–4 p.m	Discussion/Summary	Review Panel.	
4 p.m.–4:15 p.m	Public Comment	Public.	
4:15 p.m	Adjourn.		
Thursday, December 7, 2023			
9 a.m.–9:05 a.m	Welcome/Logistics, Introductions/ Agenda.	Michele Traver, Assessment Process Lead; Olaf Jensen, Panel Chair.	
9:05 a.m.–10:15 a.m	TOR #4 cont'	Gavin Fay, Jason McNamee	Stock Structure.
10:15 a.m.–10:30 a.m	Break.		
10:30 a.m.–10:45 a.m	TOR #8	Kiersten Curti	Summarize Woods Hole Assessment Model recommended model; Alternative Assessment Approach.
10:45 a.m.–11:30 a.m	TOR #7	Julia Beaty	Research Recommendations.
11:30 a.m.–12 p.m	Discussion/Summary	Panel.	
12 p.m.–12:15 p.m	Public Comment	Public.	
12:15 p.m.–1:15 p.m	Lunch.		
1:15 p.m.–4 p.m	Report writing	Panel.	
4 p.m	Adjourn.		

The meeting is open to the public; however, during the 'Report Writing' session on Thursday, December 7th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email (see **FOR FURTHER INFORMATION CONTACT**).

Dated: November 29, 2023.

Michael P. Ruccio,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–26565 Filed 12–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD561]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council (Council) Scallop Plan Team will hold a meeting.

DATES: The meeting will be held on Thursday, December 14, 2023, from 1 p.m. to 4 p.m., Alaska time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/3024.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sarah Rheinsmith, Council staff; phone: (907) 271–2809; email: *sarah.rheinsmith@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, December 14, 2023

The Scallop Plan Team will meet to review research priorities, and other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3024* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3024.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/3024.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 29, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–26570 Filed 12–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Pacific Coast Groundfish; Salmon Bycatch Minimization Information Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 25, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Pacific Coast Groundfish Salmon Bycatch Minimization.

OMB Control Number: 0648–0794.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 14.

Average Hours per Response: SMP proposal (10 hours), SMP amendment (3 hours), Administrative appeals for disapproved SMP (6 hours), SMP postseason report (8 hours).

Total Annual Burden Hours: 113 burden hours.

Needs and Uses: This request is for extension of a currently approved information collection. On February 23, 2021, NMFS published in the **Federal Register** a final rule (86 FR 10857) allowing a Pacific whiting sector cooperative or group of vessels to develop a Salmon Mitigation Plan (SMP) to promote reduction in Chinook salmon bycatch. The rule also established that vessels with a NMFS-approved SMP have access to the Chinook salmon bycatch reserve regardless of NMFS implementing other in season measures to minimize salmon bycatch. The associated regulations are found at 50 CFR part 660. OMB approved the collection-of-information requirements contained in the final rule on March 10, 2021, under OMB Control Number 0648–0794 (Pacific Coast Groundfish Salmon Bycatch Minimization).

The public reporting burden for the submission of SMPs and post-season reports includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS estimates receiving up to six SMP proposals, six SMP post-season reports, and one amended SMP, per year over the next three years. NMFS estimates receiving one administrative appeal for a disapproved SMP over the next three years. Public reporting burden is estimated to average 10 hours per response for the SMP proposal, 3 hours per response for an amended SMP, 6 hours per response for an administrative appeal of a disapproved SMP, and 8 hours per response for the SMP postseason report.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 50 CFR 660.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0794.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–26517 Filed 12–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Substantive Submissions Made During the Prosecution of the Trademark Application

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0054 Substantive Submissions Made During the Prosecution of the Trademark Application. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before February 2, 2024.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0054 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Catherine Cain, Attorney Advisor, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email to *Catherine.Cain@uspto.gov.* Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.,* which provides for the registration of trademarks, service marks, collective trademarks and collective service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the United States Patent and Trademark Office (USPTO).

Such individuals and businesses may also submit various communications to the USPTO, including providing additional information needed to process a request to delete a particular filing basis from an application or to divide an application identifying multiple goods and/or services into two or more separate applications. Applicants may seek a six-month extension of time to file a statement that the mark is in use in commerce or submit a petition to revive an application that was abandoned for failure to submit a timely response to an office action or a timely statement of use or extension request. In some circumstances, an applicant may expressly abandon an application by filing a request for withdrawal of the application.

The rules implementing the Trademark Act are set forth in 37 CFR part 2. These rules mandate that each register entry include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine the availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. As a result, the Federal trademark registration process is intended to reduce unnecessary litigation, and its accompanying costs and burdens.

The information in this collection is used to process the substantive submissions made during prosecution of the trademark application. The submissions in this information collection are a matter of public record and are used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is accessible online, through the USPTO website, as well as through various USPTO facilities.

II. Method of Collection

Items in this information collection must be submitted electronically. In limited circumstances, applicants may be permitted to submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651–0054.

Forms:

- PTO Form 1553 (Allegation of Use (Statement of Use/Amendment to Allege Use))
- PTO Form 1554 (Request to Divide Application)
- PTO Form 1555 (Response to Intent-to-Use/Divisional (ITU/Divisional) Unit Office Action)
- PTO Form 1556 (Response to Petition to Revive Deficiency Letter)
- PTO Form 1557 (Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA)
- PTO Form 1581 (Request for Extension of Time to File a Statement of Use)
- PTO Form 2194 (Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action)
- PTO Form 2195 (Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request)
- PTO Form 2200 (Request to Delete Section 1(b) Basis, Intent to Use)
- PTO Form 2202 (Request for Express Abandonment (Withdrawal) of Application)
- PTO Form 2301 (Petition to Director)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 373,293 respondents.

Estimated Number of Annual Responses: 373,293 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 30 minutes (0.5 hours) and 70 minutes (1.17 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 265,556 hours.

Estimated Total Annual Respondent Cost Burden: $118,703,532.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item no.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] ($/hour) (f)	Estimated annual respondent burden (e) × (f) = (g)
1	Allegation of Use (Statement of Use/Amendment to Allege Use). (PTO Form 1553)	94,729	1	94,729	1 (60 minutes)	94,729	$447	$42,343,863
2	Request for Extension of Time to File a Statement of Use (PTO Form 1581).	238,839	1	238,839	0.58 (35 minutes).	138,527	447	61,921,569
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (PTO Form 2194).	20,665	1	20,665	1 (60 minutes)	20,665	447	9,237,255
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (PTO Form 2195).	1,067	1	1,067	0.67 (40 minutes).	715	447	319,605
5	Request to Delete Section 1(b) Basis, Intent to Use (PTO Form 2200).	2,188	1	2,188	0.5 (30 minutes)	1,094	447	489,018
6	Request for Express Abandonment (Withdrawal) of Application (PTO Form 2202).	9,702	1	9,702	0.5 (30 minutes)	4,851	447	2,168,397
7	Request to Divide Application (PTO Form 1554).	3,223	1	3,223	0.67 (40 minutes).	2,159	447	965,073
8	Response to Intent-to-Use/Divisional (ITU/Divisional) Unit Office Action (PTO Form 1555).	5	1	5	1.17 (70 minutes).	6	447	2,682
9	Response to Petition to Revive Deficiency Letter (PTO Form 1556).	436	1	436	0.83 (50 minutes).	362	447	161,814
10	Petition to Director (PTO Form 2301).	2,385	1	2,385	1 (60 minutes)	2,385	447	1,066,095
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA (PTO Form 1557).	54	1	54	1.17 (70 minutes).	63	447	28,161
Totals		373,293		373,293		265,556		118,703,532

[1] 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F–41. The USPTO uses the average billing rate for intellectual property work in all firms which is $447 per hour (*https://www.aipla.org/home/news-publications/economic-survey*).

Estimated Total Annual Respondent Non-hourly Cost Burden: $43,517,005. There are no capital start-up, maintenance costs, or recordkeeping costs associated with this information collection. However, USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of filing fees and postage is $43,517,005.

Filing Fees

There are fees associated with submitting certain items in this information collection as outlined in Table 2 below:

TABLE 2—FILING FEES

Item No.	Fee code	Item	Estimated annual responses (a)	Estimated fee amount (b)	Estimated non-hour cost burden (a) × (b) = (c)
1	6002 6003	Allegation of Use (Statement of Use/Amendment to Allege Use) (Paper).	1	$200	$200
1	7002 7003	Allegation of Use (Statement of Use/Amendment to Allege Use) (Electronic).	94,729	100	9,472,900

TABLE 2—FILING FEES—Continued

Item No.	Fee code	Item	Estimated annual responses (a)	Estimated fee amount (b)	Estimated non-hour cost burden (a) × (b) = (c)
2	6004	Request for Extension of Time to File a Statement of Use (Paper).	1	225	225
2	7004	Request for Extension of Time to File a Statement of Use (Electronic).	238,839	125	29,854,875
3	6010	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Paper).	1	250	250
3	7010	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Electronic).	20,665	150	3,099,750
4	6010	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Paper).	1	250	250
4	7010	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Electronic).	1,067	150	160,050
7	6006	Request to Divide Application (Paper)	1	200	200
7	7006	Request to Divide Application (Electronic)	3,223	100	322,300
10	6005	Petition to Director (Paper)	1	350	350
10	7005	Petition to Director (Electronic)	2,385	250	596,250
11	6010	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA (Paper).	1	250	250
11	7010	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA (Electronic).	54	150	8,100
		Totals			43,515,950

Postage

Although the USPTO requires that the items in this information collection be submitted electronically, in certain circumstances, respondents may be permitted to submit responses by mail through the United States Postal Service (USPS). The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat rate envelope, will be $9.95. The USPTO estimates approximately 106 submissions per year may be mailed to the USPTO, for an estimated total postage cost of $1,055 per year.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–26556 Filed 12–1–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0161]

Evaluation of the REL Appalachia Teaching Math to Young Children Toolkit

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 3, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information

Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Johnson, 202–453–7439.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the REL Appalachia Teaching Math to Young Children Toolkit.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 320.

Total Estimated Number of Annual Burden Hours: 95.

Abstract: Mathematics knowledge acquired in early childhood provides a critical foundation for long-term student success in math as well as reading (Duncan et al., 2007; Watts et al., 2014), but the professional development (PD) and curricular support for preschool teachers often lack specific content and training on high-quality math instruction delivered by math content experts. To address this problem, the REL Appalachia toolkit development team is developing a toolkit to provide preschool teachers with support in implementing core teaching practices essential to promoting early math skills and knowledge in children. The toolkit is based on the Teaching Math to Young Children IES practice guide (Frye et al., 2013) and is being developed in collaboration with state and district partners in Virginia.

IES requests clearance for activities to support the recruitment of schools and districts to participate in an efficacy study of the toolkit as part of the REL Appalachia contract. A second OMB package, which will be submitted later this year, will request clearance for data collection instruments and the collection of district administrative data.

The study will assess the efficacy of the professional development resources included in the toolkit. The evaluation will also assess how teachers implement the toolkit to provide context for the efficacy findings and guidance to improve the toolkit and its future use. The evaluation will take place in 50 schools across approximately 10 school divisions in Virginia and focus on mathematics teaching practices and student mathematics knowledge and skills in preschool classrooms. The purpose of this study will be to measure the efficacy and implementation of the REL AP-developed toolkit designed to improve teacher practice and preschool students' math learning outcomes. The toolkit evaluation will produce a report for district and school leaders who are considering strategies to improve math learning in preschool. The report will be designed to help them decide whether and how to use the toolkit to help them implement the practice guide recommendations.

Dated: November 30, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26693 Filed 12–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0200]

Agency Information Collection Activities; Comment Request; Application for Grants Under the Predominantly Black Institutions Formula Grant Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 2, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0200. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Shakir Davy, (202) 453–7792.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants Under the Predominantly Black Institutions Formula Grant Program.

OMB Control Number: 1840–0812.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 39.

Total Estimated Number of Annual Burden Hours: 780.

Abstract: The Higher Education Opportunity Act of 2008 amended title III, part A of the Higher Education Act to include section 318—the Predominantly Black Institutions (PBI) Program. The PBI Program makes 5-year grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institution's capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students.

Dated: November 29, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26522 Filed 12–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0202]

Agency Information Collection Activities; Comment Request; Study of the Impact of English Learner Reclassification Policies

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 2, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0202. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tracy Rimdzius, 202–453–7403.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of the Impact of English Learner Reclassification Policies.

OMB Control Number: 1850–0974.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 1,080.

Total Estimated Number of Annual Burden Hours: 1,477.

Abstract: The data collection described in this submission will assist policymakers in understanding the impact of classification and reclassification policies that govern students' English learner (EL) status. Specifically, the study examines (1) whether classification and reclassification was implemented more consistently across districts within states after the start of the Every Student Succeeds Act (ESSA) and (2) whether classification and reclassification at current thresholds helps, harms, or is neutral for ELs' and former ELs' instructional opportunities, experiences, achievement, and attainment. This revision request adds district and school surveys to the approved data collection. The surveys will assess how district-level policies, practices, and procedures influence the impacts of reclassification on ELs as well as provide valuable descriptive information from districts and schools on local implementation of policies and practices that may affect outcomes for ELs. It will complement an existing data collection (#1850–0974) of student information from state longitudinal data systems (SLDSs).

Dated: November 29, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26568 Filed 12–1–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4639–033]

Ampersand Christine Falls Hydro, LLC; Notice of Waiver Period for Water Quality Certification Application

On November 27, 2023, Ampersand Christine Falls Hydro, LLC (Ampersand) submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for Clean Water Act section 401(a)(1) water quality certification filed with the New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and

section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify the New York DEC of the following:

Date of Receipt of the Certification Request: November 27, 2023.

Reasonable Period of Time to Act on the Certification Request: One year (November 27, 2024).

If New York DEC fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: November 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26541 Filed 12–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP24–19–000.

Applicants: Atmos Energy Corporation.

Description: Application of Atmos Energy Corporation for a Limited Jurisdiction Certificate of Public Convenience and Necessity.

Filed Date: 11/22/23.

Accession Number: 20231122–5146.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: PR24–12–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: § 284.123 Rate Filing: COH Rates effective 10–27–2023 to be effective 10/27/2023.

Filed Date: 11/27/23.

Accession Number: 20231127–5111.

Comment Date: 5 p.m. ET 12/18/23.

Docket Numbers: RP24–171–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 11.28.23 Negotiated Rates—Emera Energy Services, Inc. R–2715–90 to be effective 12/1/2023.

Filed Date: 11/28/23.

Accession Number: 20231128–5005.

Comment Date: 5 p.m. ET 12/11/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26539 Filed 12–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–466–000]

Great Basin Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed 2024 Great Basin Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the 2024 Great Basin Expansion Project (Project), proposed by Great Basin Gas Transmission Company (Great Basin) in the above-referenced docket. Great Basin requests authorization to construct, operate, and abandon certain natural gas pipeline facilities. The expansion would provide 5,674 dekatherms per day of incremental firm transportation service for two existing firm transportation shippers and would require construction of approximately 3.4 miles of upsized or looped pipeline in three segments across Douglas, Lyon, and Storey Counties, Nevada.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Bureau of Land Management (BLM) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The BLM will adopt and use the EA to consider the issuance of a right-of-way grant for the portion of the project on federal lands.

The proposed Project includes the following facilities:

- construction of approximately 0.3 mile of 20-inch-diameter pipeline loop along the Carson Lateral in Storey County, Nevada, referred to as the Truckee Canal segment;
- abandonment and replacement of approximately 2.9 miles of existing 10-inch-diameter pipeline with new 20-inch-diameter pipeline along the Carson Lateral in Lyon County, Nevada, referred to as the Silver Springs segment; and
- construction of approximately 0.3 mile of 12-inch-diameter pipeline loop paralleling its South Tahoe Lateral in Douglas County, Nevada, referred to as the Kingsbury segment.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; environmental justice stakeholders adjacent to the Project area that include legal aid providers, rural cooperatives, community social services organizations, senior citizens centers, public health agencies; newspapers and libraries in the project area; and other interested individuals and groups. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-*

[1] 18 CFR 4.34(b)(5).

documents). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP23–466). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00pm Eastern Time on December 28, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–466–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene*.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: November 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26542 Filed 12–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–39–000.

Applicants: NMRD Data Center II, LLC.

Description: NMRD Data Center II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/28/23.

Accession Number: 20231128–5029.

Comment Date: 5 p.m. ET 12/19/23.

Docket Numbers: EG24–40–000.

Applicants: NMRD Data Center III, LLC.

Description: NMRD Data Center III, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/28/23.

Accession Number: 20231128–5038.

Comment Date: 5 p.m. ET 12/19/23.

Docket Numbers: EG24–41–000.

Applicants: True North Solar, LLC.

Description: True North Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/28/23.

Accession Number: 20231128–5093.

Comment Date: 5 p.m. ET 12/19/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–101–000.

Applicants: Mid-Atlantic Offshore Development, LLC.

Description: Mid-Atlantic Offshore Development, LLC submits Supplement to September 21, 2023, Petition for Declaratory Order, Request for Shortened Comment Period and Request for Expedited Consideration.

Filed Date: 11/22/23.

Accession Number: 20231122–5156.

Comment Date: 5 p.m. ET 12/6/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2708–010.

Applicants: PJM Interconnection, L.L.C., Potomac-Appalachian Highline Transmission, LLC.

Description: ALJ Settlement: Potomac-Appalachian Highline Transmission, LLC submits tariff filing per 385.602:

PATH Companies Offer of Settlement in ER09–1256 and ER12–2708 to be effective 12/31/9998.

Filed Date: 11/17/23.

Accession Number: 20231117–5137.

Comment Date: 5 p.m. ET 12/7/23.

Reply Comment Date: 5 p.m. ET 12/15/23.

Docket Numbers: ER23–2929–000.

Applicants: Amcor Storage LLC.

Description: Supplement to September 26, 2023, Amcor Storage LLC tariff filing.

Filed Date: 11/16/23.

Accession Number: 20231116–5226.

Comment Date: 5 p.m. ET 12/8/23.

Docket Numbers: ER24–113–000; ER24–114–000.

Applicants: BCD 2024 Fund 1 Lessee, LLC, Salt Creek Township Solar, LLC.

Description: Supplement to October 16, 2023, Salt Creek Township Solar, LLC, et. al. tariff filing under ER24–113, et. al.

Filed Date: 11/21/23.

Accession Number: 20231121–5232.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: ER24–439–000; ER19–1553–000.

Applicants: Southern California Edison Company, Southern California Edison Company.

Description: Informational Filing of 2024 Transmission Formula Rate Annual Update of Southern California Edison Company.

Filed Date: 11/17/23.

Accession Number: 20231117–5257.

Comment Date: 5 p.m. ET 12/8/23.

Docket Numbers: ER24–441–000.

Applicants: Southern California Edison Company.

Description: Informational Filing of 2024 Formula Rate Annual Update of Southern California Edison Company's West of Devers.

Filed Date: 11/17/23.

Accession Number: 20231117–5259.

Comment Date: 5 p.m. ET 12/8/23.

Docket Numbers: ER24–478–000.

Applicants: GSRP Pipeline Acquisition I LLC, Galt Power, Inc.

Description: GSRP Pipeline Acquisition I LLC and Galt Power, Inc. submit a Limited, Prospective Waiver of ISO New England's Operating Procedure and Transmission, Markets, and Services Tariff.

Filed Date: 11/22/23.

Accession Number: 20231122–5217.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–485–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Dove Run Solar Generation Interconnection Agreement to be effective 10/31/2023.

Filed Date: 11/27/23.

Accession Number: 20231127–5186.

Comment Date: 5 p.m. ET 12/18/23.

Docket Numbers: ER24–486–000.

Applicants: Shenandoah Hills Wind Project, LLC.

Description: Request for Prospective Tariff Waiver, et al. of Shenandoah Hills Wind Project, LLC.

Filed Date: 11/27/23.

Accession Number: 20231127–5210.

Comment Date: 5 p.m. ET 12/18/23.

Docket Numbers: ER24–487–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to 11 Service Agreements re: FirstEnergy Reorganization to be effective 12/31/9998.

Filed Date: 11/28/23.

Accession Number: 20231128–5068.

Comment Date: 5 p.m. ET 12/19/23.

Docket Numbers: ER24–488–000.

Applicants: Dow Pipeline Company.

Description: § 205(d) Rate Filing: Notice of Succession and Revised Market-Based Rate Tariff to be effective 11/29/2023.

Filed Date: 11/28/23.

Accession Number: 20231128–5076.

Comment Date: 5 p.m. ET 12/19/23.

Docket Numbers: ER24–489–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3396R3 Otter Tail Power Company NITSA and NOA to be effective 1/1/2024.

Filed Date: 11/28/23.

Accession Number: 20231128–5089.

Comment Date: 5 p.m. ET 12/19/23.

Docket Numbers: ER24–490–000.

Applicants: Southwest Power Pool, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Otter Tail Power Company Network Customer Transmission Credits to be effective 1/1/2024.

Filed Date: 11/28/23.

Accession Number: 20231128–5115.

Comment Date: 5 p.m. ET 12/19/23.

Docket Numbers: ER24–491–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Whirlwind Energy 1st A&R Generation Interconnection Agreement to be effective 11/3/2023.

Filed Date: 11/28/23.

Accession Number: 20231128–5116.

Comment Date: 5 p.m. ET 12/19/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26540 Filed 12–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–482–000]

River Fork Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of River Fork Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 18, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–26538 Filed 12–1–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OITA–2023–0383; FRL–11536–01–OITA]

Proposed Information Collection Request; Comment Request; Combined EPA-Tribal Environmental Plan (ETEP) and Indian Environmental General Assistance Program (GAP) Work Plan Template

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Combined EPA-Tribal Environmental Plan (ETEP) and Indian Environmental General Assistance Program (GAP) Work Plan Template'' (EPA ICR No. 2790.01, OMB Control No. 2090–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 2, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OITA–2023–0383 online using *www.regulations.gov* (our preferred method), by email to *docket_oms@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Abigail Cruz, Office of International and Tribal Affairs/American Indian Environmental Office, 2690R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5999; fax number: 202–566–9744; email address: *cruz.abigail@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1752. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility: (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA is developing a template to assist grantees and EPA with the creation of combined EPA-Tribal Environmental Plans (ETEPs) and Indian Environmental General Assistance Program (GAP) work plans. This template will provide a streamlined way to identify and report information that is already outlined in the 2022 GAP Guidance, 40 CFR 35.507, and the 1992 Indian Environmental General Assistance Program Act. In the 2022 GAP Guidance, section 2.3, the American Indian Environmental Office

(AIEO) commits to providing templates to assist Tribes considering a streamlined format. The template itself does not introduce any new requirements, nor does it limit the information that applicants may submit.

Form Numbers: None.

Respondents/affected entities: small governmental jurisdiction (Federally recognized Tribes and intertribal consortia).

Respondent's obligation to respond: mandatory if the recipient chooses to combine their GAP EPA-Tribal Environmental Plan and Work Plan into one document.

Estimated number of respondents: 500 (total).

Frequency of response: annually (and also every 3–5 years).

Total estimated burden: 2 hours (per year) and 28 hours (every 3–5 years). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1650 (30 hours total/every 3–5 years), but $110 (per year).

Changes in Estimates: There will likely be a decrease of hours in the total estimated respondent burden due to the fact that the recipients will now have a streamlined template, resulting in less duplicative and unnecessary reporting and increased clarity in what reporting is required.

Jane Nishida,

Assistant Administrator, Office of International and Tribal Affairs.

[FR Doc. 2023–26520 Filed 12–1–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Reports of Deposits (FR 2900, FR 2915; OMB No. 7100–0087).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Reports of Deposits.

Collection identifier: FR 2900, FR 2915.

OMB control number: 7100–0087.

General description of collection: The Reports of Deposits information collection comprises the Report of Deposits and Vault Cash (FR 2900) and the Report of Foreign (Non-U.S.) Currency Deposits (FR 2915). The FR 2900 collects information on select deposits and vault cash from depository institutions. The FR 2915 collects the weekly average amount outstanding of deposits denominated in foreign (non-U.S.) currencies held at U.S. offices of depository institutions that are included in the FR 2900.

Frequency: Weekly; quarterly.

Respondents: Depository institutions.

Total estimated number of respondents: 994; 111.

Estimated average hours per response: 1.14; 0.55.

Total estimated annual burden hours: 59,168.[1]

Current actions: On August 18, 2023, the Board published a notice in the **Federal Register** (88 FR 56622) requesting public comment for 60 days on the extension, without revision, of the Reports of Deposits collection. The comment period for this notice expired on October 17, 2023. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, November 29, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26571 Filed 12–1–23; 8:45 am]

BILLING CODE 6210–01–P

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 2900, FR 2915.

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314).

DATES: Comments must be submitted on or before February 2, 2024.

ADDRESSES: You may submit comments, identified by FR 4201, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the

Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Market Risk Capital Rule.

Collection identifier: FR 4201.

OMB control number: 7100–0314.

General description of collection: The market risk rule, which requires banking organizations to hold capital to cover their exposure to market risk, is a component of the Board's regulatory capital framework, Regulation Q—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks (12 CFR part 217). The rule includes information collections that permit the Board to monitor the market risk profile of Board-regulated banking organizations that have significant market risk. These information collections provide current statistical data identifying market risk areas on which to focus onsite and offsite examinations. They also allow the Board to assess the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk rule.

Proposed revisions: The Board proposes to revise the FR 4201 information collection to account for a recordkeeping requirement in section 217.203(b)(2) of Regulation Q that had not been previously cleared by the Board. Section 217.203(b)(2) requires subject banking organizations to have a process for prudent valuation of their covered positions that includes policies and procedures on the valuation of positions, marking positions to market or to model, independent price verification, and valuation adjustments or reserves. The valuation process must consider, as appropriate, unearned credit spreads, close-out costs, early termination costs, investing and funding costs, liquidity, and model risk.

Frequency: Annual, quarterly, and on occasion.

Respondents: Bank holding companies, covered savings and loan holding companies,[1] U.S. intermediate holding companies of foreign banking organizations, and state member banks (collectively, banking organizations) that meet certain risk thresholds. The market risk rule applies to any such banking organization with aggregate trading assets and trading liabilities equal to (1) 10 percent or more of quarter-end total assets or (2) $1 billion or more.

Total estimated number of respondents: 37.

Total estimated change in burden: 592.

Total estimated annual burden hours: 36,236.[2]

Board of Governors of the Federal Reserve System, November 29, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26572 Filed 12–1–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Reporting Requirements Associated with Regulation XX (FR XX; OMB No. 7100–0363).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve

[1] For the definition of ''covered savings and loan holding company,'' see 12 CFR 217.2.

[2] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 4201.

System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Reporting Requirements Associated with Regulation XX.

Collection identifier: FR XX.

OMB control number: 7100–0363.

General description of collection: The Board's Regulation XX—Concentration Limit (12 CFR part 251) implements section 14 of the Bank Holding Company Act of 1956 (BHC Act), which establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or otherwise acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies (a covered acquisition). Under section 14 of the BHC Act and Regulation XX, a financial company means (1) an insured depository institution, (2) a bank holding company, (3) a savings and loan holding company, (4) any other company that controls an insured depository institution, (5) a nonbank financial company designated by the Financial Stability Oversight Council (Council) for supervision by the Board, or (6) a foreign bank or company that is treated as a bank holding company for purposes of the BHC Act. Regulation XX includes certain reporting requirements that apply to financial companies (sections 251.3(e), 251.4(b), and 251.4(c)). In addition, section 251.6 of Regulation XX requires financial companies that do not report consolidated financial information to the Board or other appropriate Federal banking agency to report information on their total liabilities; the Board has implemented this requirement through the Financial Company (as defined) Report of Consolidated Liabilities (FR XX–1).

Frequency: Event-generated, annual.

Respondents: Financial companies.

Total estimated number of respondents: 35.

Total estimated annual burden hours: 97.[1]

Current actions: On July 19, 2023, the Board published a notice in the **Federal Register** (88 FR 46162) requesting public comment for 60 days on the extension, without revision, of the FR XX. The comment period for this notice expired on September 18, 2023. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, November 29, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26573 Filed 12–1–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.568]

Reallotment of Fiscal Year 2022 Funds for the Low Income Home Energy Program-Final

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of final issuance.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Service (OCS), Division of Energy Assistance announces that $17,260,985 of funds from the federal fiscal year (FFY) 2022 Low Income Home Energy Assistance Program (LIHEAP) were reallotted to states, territories, tribes, and tribal organizations that received FFY 2023 direct LIHEAP grants.

DATES: This notice became effective on Sep. 29, 2023, which is the date on which ACF awarded these reallotments.

FOR FURTHER INFORMATION CONTACT: Megan Meadows, Director, Division of Energy Assistance, Office of Community Services, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC 20201. Telephone: 202–401–1149; email: *Megan.Meadows@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8626(b)(1)), as amended, ACF published a notice in the **Federal Register** on Sep. 26, 2023, 88 FR 66005, announcing the Secretary's preliminary determination that $21,985,238 of FFY 2022 funds for LIHEAP may be available for reallotment. ACF received one comment. It came from a member of the public who appeared to seek the program's benefits. ACF advised the inquirer of the resources through which to seek information about such benefits. After such publication, ACF reduced this amount to $17,260,985 because of (1) reporting revisions made by grant recipient; and (2) insufficient Payment Management System balances.

These funds became available from the following grant recipients in the following amounts:

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR XX.

Name of grant recipient that returned funds for reallotment	FFY 2022 reallotment amount
Alabama	$2,378,088
Alaska	1,590,037
Delaware	199,360
Idaho	6,505,338
Michigan	2,087,677
American Samoa	2,828
Absentee Shawnee Tribe of Indians of Oklahoma	512
Fort Peck Assiniboine and Sioux Tribes	60,493
Berry Creek Rancheria	747
Bishop Paiute Tribe	13,779
Blackfeet Tribe	264,815
Catawba Indian Nation	789
Cherokee Nation	134,641
Cheyenne and Arapaho Tribes	4,032
Cocopah Indian Tribe	3,403
Colorado River Indian Tribes	6,166
Confederated Tribes of the Colville Indian Reservation	10,879
Comanche Nation	26,315
Confederated Tribes of the Grand Ronde Community of Oregon	28,859
Confederated Tribes of Siletz Indians of Oregon	8,000
Confederated Tribes of Warm Springs	11,141
Confederated Salish and Kootenai Tribes	77,905
Delaware Nation	275
Eastern Band of Cherokee Indians	6,466
Eastern Shoshone Tribe	27,049
Fort Belknap Indian Community	109,264
Gila River Indian Community	14,178
Hoh Tribe	4,404
Hoopa Valley Tribe	45,051
Inter-Tribal Council of MI, Inc.	1,363
Jicarilla Apache Nation	2,153
Kalispel Tribe of Indians	657
Kaw Nation	419
Little River Band of Ottawa Indians	159,939
Lower Elwha Klallam Tribe	1,928
Makah Tribe	1,890
Narragansett Indian Tribe	447
Navajo Nation	1,153,394
Nooksack Indian Tribe	18,243
Northern Arapaho Tribe	8,741
Oglala Sioux Tribe	831,158
Otoe-Missouria Tribe of Indians	241
Pawnee Nation of Oklahoma	5,866
Poarch Band of Creek Indians	35,069
Pueblo of Jemez	5,372
Pueblo of Zuni	28,762
Quapaw Nation	5,616
Quileute Tribe	5,009
Quinault Indian Nation	3,026
Round Valley Indian Tribes	28,912
Sac and Fox Nation of Oklahoma	17,639
Seldovia Village Tribe	11,278
Seneca Nation of Indians	2,453
South Puget Intertribal Planning Agency	739
Spirit Lake Nation	38,342
Standing Rock Sioux Tribe	396,242
Thlopthlocco Tribal Town	7,914
Turtle Mountain Band of Chippewa Indians	67,861
Ute Indian Tribe	1,672
Confederated Tribes and Bands of the Yakama Nation	551,163
Yankton Sioux Tribe	244,986
Total	17,260,985

The list of grant recipients that were awarded these funds was published in a Dear Colleague Letter (DCL), which is posted to ACF's website at LIHEAP DCL 2023–15 Reallotment of LIHEAP Funds FFY 2022.

Pursuant to the statute cited above, these funds were reallotted on Sep. 29, 2023 to all three types of FFY 2023 LIHEAP grant recipients by distributing them under the formula that Congress set for FFY 2023 funding. The three types of recipients that did not receive funds were (1) those whose allocations would have been less than $25; (2) tribes or tribal organizations that agreed with their co-territorial states to receive set amounts for the entire fiscal year;

and (3) states or territories that were held to the additional minimum floor required by the FFY 2023 appropriations act after including the reallotment amount. No sub-recipients of these recipients or other entities may apply for these funds.

The reallotted funds may be used for any purpose authorized under LIHEAP. Grant recipients must add these funds to their total LIHEAP funds payable for FFY 2023 for purposes of calculating statutory caps on administrative costs, carryover, Assurance 16 activities, and weatherization assistance. Grant recipients must also (1) ensure that these funds are included in the amounts that ACF pre-populated on Line 1.1 of their FFY 2023 Carryover and Reallotment Reports; (2) reconcile these funds, to the extent that they received them, with the other sources described in LIHEAP DCL 2023–05 that used the grant number ending in ''LIEA'' on the associated Federal Financial Report; and (3) record, on their FFY 2023 Household Reports, households that receive benefits at least partly from these funds. State recipients must also ensure that these funds are included in the Grantee Survey sections of their FFY 2023 LIHEAP Performance Data Forms.

OCS recommends that, after receiving them, grant recipients obligate these funds before obligating any other federal LIHEAP funds.

Statutory Authority: 42 U.S.C. 8626(b).

Karen D. Shields,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2023–26503 Filed 12–1–23; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Refugee Data Submission System for Formula Funds Allocations and Service Analysis (ORR–5) (Office of Management and Budget #0970–0043)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for children and Families (ACF), U.S. Department of Health and Human Services (HHS), seeks an update to the existing data collection for the form ORR–5: Refugee Data Submission System for Formula Funds Allocations and Service Analysis (OMB#: 0970–0043, expiration 4/30/2024) and requests an extension of approval for three years. Minor changes to the form ORR–5 include the addition of the following two data elements: client email address and client phone number. ACF estimates the proposed changes will not increase response burden.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR–5 is designed to satisfy the statutory requirements of the Immigration and Nationality Act (INA). Section 412(a)(3) of INA (8 U.S.C. 1522(a)(3)) requires that the Director of ORR make a periodic assessment of the needs of refugees for assistance and services and the resources available to meet those needs. ORR proposes an extension with minor changes to the current form to ensure continuous information collection, enabling the ORR Director to better understand client demographics, services utilized, and the outcomes achieved by clients enrolled in certain ORR-funded programs. Data elements continue to include ORR program entrance and exit dates, biographical information, referrals for services, progress made toward achieving self-sufficiency, and employment status. ORR proposes to add the following two data elements: client email address and client phone number. Adding these data points will enable ORR to obtain updated contact information for refugees who received ORR-funded services. The data collected will inform evidence-based policy making and program design.

Respondents: States, Replacement Designees, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Refugee Data Submission for Formula Funds Allocations and Service Analysis (ORR–5)	50	1	140	7,000

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 1522(a)(3).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–26552 Filed 12–1–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2564]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by January 3, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0562. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

OMB Control Number 0910–0562—Extension

This information collection supports FDA guidance. The Food Quality Protection Act of 1996 (Pub. L. 104–170), which amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Pub. L. 80–104) and the Federal Food, Drug, and Cosmetic Act (FD&C Act), established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides (under FIFRA) and for establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the FD&C Act). EPA may, for various reasons, *e.g.,* as part of a systematic review or in response to new information concerning the safety of a specific pesticide, reassess whether a tolerance for a pesticide residue continues to meet the safety standard in section 408 of the FD&C Act (21 U.S.C. 346a). When EPA determines that a pesticide's tolerance level does not meet that safety standard, the registration for the pesticide may be canceled under FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities.

Under section 408(l)(2) of the FD&C Act, when the registration for a pesticide is canceled or modified due to, in whole or in part, dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the Agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture has responsibility for monitoring residue levels and enforcing pesticide tolerances in meat, poultry, catfish, and certain egg products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. We would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an ''adulterated'' food. However, the channels of trade provision of the FD&C Act addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FD&C Act) states that food containing a residue of such a pesticide shall not be deemed ''adulterated'' by virtue of the residue, if the residue is within the former tolerance, and the responsible party can demonstrate to FDA's satisfaction that the residue is present as the result of an application of the pesticide at a time and in a manner that were lawful under FIFRA.

To assist respondents with the information collection, we have developed the guidance document entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations'' (May 2005). The guidance represents FDA's current thinking on its planned enforcement approach to the channels of trade provision of the FD&C Act and how that provision relates to FDA-regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified by EPA under dietary risk considerations. The guidance can be

found at the following link: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-channels-trade-policy-commodities-residues-pesticide-chemicals-which-tolerances.*

We anticipate that food bearing lawfully applied residues of pesticide chemicals that are the subject of future EPA action to revoke, suspend, or modify their tolerances, will remain in the channels of trade after the applicable tolerance is revoked, suspended, or modified. If we encounter food bearing a residue of a pesticide chemical for which the tolerance has been revoked, suspended, or modified, we intend to address the situation in accordance with provisions of the guidance. In general, we anticipate that the party responsible for food found to contain pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, *e.g.,* packed or processed, during the acceptable timeframes cited in the guidance by providing appropriate documentation to FDA as discussed in the guidance document. We are not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, we are leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes. Examples of documentation that we anticipate will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

In the **Federal Register** of August 2, 2023 (88 FR 50880), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received 2 comments, one of which was not PRA related and will not be addressed in this document. The other comment questioned the utility of pesticide application records used to demonstrate a pesticide was applied at an acceptable time and in a lawful manner for crops commingled with other commodities. The channels of trade provision (section 408(l)(5) of the FD&C Act) states that food containing a residue of such a pesticide shall not be deemed ''adulterated'' by virtue of the residue, if the residue is within the former tolerance, and the responsible party can demonstrate to FDA's satisfaction that the residue is present as the result of an application of the pesticide at a time and in a manner which were lawful under FIFRA. We leave it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes. Pesticide spray records may be used as a documentation to demonstrate the residues in food are from an application of the pesticide at a time and in a manner which were lawful under FIFRA.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of documentation	1	1	1	3	3

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We expect the total number of pesticide tolerances that are revoked, suspended, or modified by EPA under dietary risk considerations in the next 3 years to remain at a low level, as there have been no changes to the safety standard for pesticide residues in food since 1996. Thus, we expect the number of submissions we receive under the guidance document to also remain at a low level. However, to avoid counting this burden as zero, we have estimated the burden at one respondent making one submission a year for a total of one annual submission.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per record	Total hours
Develop documentation process	1	1	1	16	16

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: November 29, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26564 Filed 12–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1929]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by January 3, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0167. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Orphan Drugs—21 CFR Part 316

OMB Control Number 0910–0167—Extension

This information collection helps support implementation of sections 525, 526, 527, and 528 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360aa, 360bb, 360cc, and 360dd), as well as related guidance and Agency forms. Sections 525, 526, 527, and 528 of the FD&C Act pertain to the development of drugs for rare diseases or conditions, including biological products and antibiotics, otherwise known or referred to as ''orphan drugs.'' Specifically, section 525 of the FD&C Act requires written recommendations on studies required for approval of a marketing application for a drug for a rare disease or condition. Section 526 of the FD&C Act provides for designation of drugs as orphan drugs when certain conditions are met; section 527 provides conditions under which a sponsor of an approved orphan drug enjoys exclusive FDA marketing approval for that drug for the orphan indication for a period of 7 years; and, finally, section 528 is intended to encourage sponsors to make investigational orphan drugs available for treatment of persons in need on an open protocol basis before the drug has been approved for general marketing. Open protocols may permit patients who are not part of the formal clinical investigation to obtain treatment where adequate supplies exist and no alternative effective therapy is available.

Agency regulations in part 316, subpart A (21 CFR part 316, subpart A) (§§ 316.1 through 316.4) identify the scope of coverage, applicable definitions, and statutory provisions applicable to orphan drugs. The regulations in part 316, subpart B (§§ 316.10 through 316.14) set forth content and format elements for written recommendation requests and discuss FDA providing or refusing to provide the requested written recommendations. Similarly, regulations in part 316, subpart C (§§ 316.20 through 316.30) prescribe content and format elements for requesting orphan drug designation; identify submission schedules for requisite information including amendments, updates, and reports; and provide for publication and revocation of orphan drug designation. Regulations in part 316, subparts D and E (§§ 316.31 through 316.40) address orphan drug exclusive approval and open protocols for investigations, respectively. Finally, regulations in part 316, subpart F (§§ 316.50 through 316.52) provide for the issuance of guidance documents that apply to the orphan drug provisions of the FD&C Act and regulations in part 316. The list is maintained on the internet and guidance documents are issued in accordance with our good guidance practices regulation in 21 CFR 10.115, which provide for public comment at any time.

The information collection includes the Agency guidance document entitled ''Meetings with the Office of Orphan Products Development: Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff'' (July 2015), available for download at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/meetings-office-orphan-products-development.* It provides recommendations to industry, researchers, patient groups, and other stakeholders interested in requesting a meeting, including a teleconference, with the Office of Orphan Products Development (OOPD) on issues related to orphan drug designation requests, humanitarian use device designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. It is also intended to assist OOPD staff in addressing such meeting requests. The guidance describes procedures for requesting, preparing, scheduling, conducting, and documenting such meetings and discusses background information we recommend be included in such requests.

The information collection includes Form FDA 3671, Common EMEA/FDA Application for Orphan Medicinal Product, and Form FDA 4035, FDA Orphan Drug Designation Request Form, intended to benefit sponsors who desire to seek orphan designation of drugs intended for rare diseases or conditions from FDA. The form is a simplified method for sponsors to provide only the information required by § 316.20 for FDA decision making. Orphan drug designation requests and related submissions (amendments, annual reports, etc.), humanitarian use device designation, and rare pediatric disease designation requests and submissions may be submitted electronically by email to the OOPD.

As communicated on our website at *https://www.fda.gov/industry/medical-products-rare-diseases-and-conditions/designating-orphan-product-drugs-and-biological-products,* respondents may submit orphan drug designation requests electronically through the Center for Drug Evaluation and Research (CDER) NextGen portal, or by emailing the required information to

orphan@fda.hhs.gov; or by mailing the required information to the OOPD at the address found on our website. New users of the CDER NextGen Portal must register for an account. For designation requests submitted by email, the Agency recommends using automated read receipt to verify receipt of the email.

Sponsors and others who plan to email information to FDA that is private, sensitive, proprietary, or commercial confidential are strongly encouraged to send it from an FDA-secured email address so the transmission is encrypted. The Agency will assume the addresses of emails received or email addresses provided as a point of contact are secure when responding to those email addresses. Sponsors and others can establish a secure email address link to FDA by sending a request to *SecureEmail@fda.hhs.gov.* There may be a fee to a commercial enterprise for establishing a digital certificate before encrypted emails can be sent to FDA.

Respondents to the information collection are sponsors who develop investigational drugs and biologicals for commercial use and who seek orphan drug designation, and upon approval or licensure, orphan drug exclusivity.

In the **Federal Register** of June 13, 2023 (88 FR 38513), we published a 60-day notice soliciting comment on the proposed collection of information. Although we received one comment, it was not responsive to the information collection topics solicited and therefore is not addressed in this notice.

We estimate the burden of this collection of information as follows based on data from 2022:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part or section; activity	Number of respondents	Number of records per recordkeeper	Total annual records	Average burden per record	Total hours
Part 316 associated records	780	1.25	975	135	131,625
§§ 316.20, 316.21, 316.26 (Form FDA 4035)	780	1.25	975	32	31,200
§ 316.22; Notifications of changes in agents	300	1	300	0.5	150
§ 316.24(a); Deficiency letters and granting orphan-drug designation	20	1	20	2	40
§ 316.27; Submissions to change ownership of orphan-drug designation	90	1	90	3	270
§ 316.30; Annual reports	2,039	1	2,039	3	6,117
§ 316.36; Assurance of the availability of sufficient quantities of the orphan drug; holder's consent for the approval of other marketing applications for the same drug	1	3	3	15	45
Guidance Recommendations: Meeting requests to OOPD and related submission packages	807	1.5	1,211	4	4,842
Total			5,613		174,289

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our burden estimate includes those activities related to: (1) requesting orphan drug designation; (2) responding to deficiencies letters with submissions of amendments; (3) keeping files current with contact information for agents and transfer of ownership, when applicable; (4) submitting annual reports while products have designation status; and (5) requesting and preparing for both informal and formal meetings. Because the PRA defines a recordkeeping requirement to include reporting those records to the Federal government, we account for these activities cumulatively in table 1 above. Upon a recent evaluation of the information collection, we adjusted our burden estimate to reflect an overall increase of 50,616 hours and an increase of 766 records annually. We attribute this adjustment to an increase in the number of submissions, amendments, and annual reports.

Dated: November 29, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26544 Filed 12–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: DATA 2000 Waiver Training Payment Program Application for Payment, OMB No. 0906–0061

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 2, 2024.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: DATA 2000 Waiver Training Payment Program Application for Payment, OMB No. 0906–0061—Revision.

Abstract: The Substance Use—Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act (Pub. L. 115–271), section 6083, amended the Social Security Act (subsections 1834(o)(3) and 1833(bb)),

authorizing the HHS Secretary to pay Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) for the average cost of training for purposes of receiving a DATA 2000 waiver for their physicians and practitioners to furnish opioid use disorder treatment services. The SUPPORT Act made $6 million available to FQHCs and $2 million available to RHCs under the DATA 2000 Waiver Training Payment Program. To receive payment, FQHCs and RHCs must submit an application in the manner specified by the Secretary. Authority to administer the DATA 2000 program has been delegated to HRSA. Further information about the program can be found in the link below which provides guidance on the requirements of the DATA 2000 program and how qualified FQHCs and RHCs can apply to the program: *https://help.hrsa.gov/display/public/EHBSKBFG/DATA+2000+Waiver+Training+Payment+Program+FAQs.*

This purpose of this revision is to update the burden estimate for the RHC application process because the funding appropriated for FQHC DATA 2000 payments has been fully expended. Therefore, no new applications for FQHC DATA 2000 payments can be accepted or approved. Only Medicare participating RHCs can apply for payments through the DATA 2000 program, and pursuant to the authorizing statute and subsequent legislation eliminating the DATA 2000 waiver requirement, such RHCs may only receive payments with respect to providers who first received their DATA 2000 Waiver between January 1, 2019, and December 29, 2022.

Applicant entities must provide information identifying the submitting organization and the number of practitioners who have completed training and obtained a DATA 2000 waiver. The form will also require the entity to include information regarding each claimed practitioner's name, practitioner type (*e.g.,* physician, physician assistant, nurse practitioner, certified nurse midwife, clinical nurse specialist, certified registered nurse, or anesthetist), National Provider Identifier number, Drug Enforcement Administration number, state license number, length of training, date the training was completed, date of waiver attainment, and DATA 2000 waiver number. Additionally, the form will require signature of an attestation statement certifying that: (1) each practitioner for which the entity is seeking payment under the application is employed by or working under contract for the applicant health facility; (2) it is the first time the entity is seeking payment on behalf of the listed practitioner(s); (3) the entity is eligible to seek payment under 42 U.S.C. 1395m(o)(3) or 42 U.S.C. 1395l(bb); (4) each practitioner is furnishing opioid use disorder treatment services; and (5) the statements herein are true, complete, and accurate to the best of the applicant's knowledge.

Need and Proposed Use of the Information: The Substance Use—Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act requires RHCs to submit to the Secretary an application for payment at such time, in such manner, and containing such information as specified by the Secretary in order to receive a payment under section 6083. This form will allow RHCs to apply for such payments based on the average cost of training to obtain DATA 2000 waivers, as determined by the Secretary, for their physicians and practitioners to furnish opioid use disorder treatment services. The form will also provide HRSA with the requisite data to validate qualifying DATA 2000 waiver possessions for the purpose of ensuring accurate payments to RHCs.

Likely Respondents: Only Medicare participating RHCs are eligible to apply.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
DATA 2000 Waiver Training Payment Program Application for Payment	300	1	300	0.5	150.0
Total	300	1	300		150.0

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–26554 Filed 12–1–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Urban Indian Behavioral Health Awareness

Announcement Type: New.

Funding Announcement Number: HHS–2024–IHS–NUIBH–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.654.

Key Dates

Application Deadline Date: January 1, 2024.

Earliest Anticipated Start Date: March 1, 2024.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for the National Urban Indian Behavioral Health Awareness (NUIBH) program. The NUIBH program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); the Indian Health Care Improvement Act, 25 U.S.C. 1660e, 1665a. The Assistance Listings section of *SAM.gov* (*https://sam.gov/content/home*) describes this program under 93.654.

Background

The IHS Office of Clinical and Preventive Services, Division of Behavioral Health (DBH) serves as the primary source of national advocacy, policy development, management, and administration of behavioral health, alcohol and substance abuse, and family violence prevention programs. Working in partnership with Tribes, Tribal organizations, and Urban Indian Organizations (UIO), DBH coordinates national efforts to share knowledge and build capacity through the development and implementation of evidence/practice based and cultural-based practices in Indian Country.

Purpose

The purpose of the NUIBH program is to increase the awareness, visibility, advocacy, and education for behavioral health issues on a national scale and in the interest of improving Urban Indian health care. The NUIBH program will build, strengthen, and sustain collaborative relationships that support IHS efforts to ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to American Indian and Alaska Native (AI/AN) people living in Urban Areas. The recipient will administer an annual national forum, such as a Behavioral Health Urban Indian Listening Session where concerns and suggestions related to behavioral health care policy, service delivery, and program development will be heard from all UIOs. The recipient will also administer programs intended to provide culturally competent education and technical assistance on strategic planning and grant writing to increase the behavioral health care capacity of UIOs, and the likelihood of success in receiving awards from various sources. The recipient will develop and maintain comprehensive information on UIOs, and disseminate information on behavioral health programs, best practices, service delivery, quality improvement, and strategies to all UIOs. The recipient will also develop a quality improvement process, including appropriate evaluation tools to ensure the information developed and disseminated through the project is appropriate and useful for addressing the behavioral health needs of Urban Indian communities. The recipient's activities funded under this cooperative agreement must support all organizations that meet the statutory definition of a UIO.

Pre-Conference Award Requirements

The recipient is required to comply with the ''HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications,'' dated January 23, 2015 (Policy), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *https://www.hhs.gov/grants/contracts/contract-policies-regulations/efficient-spending/index.html?language=es.*

The recipient is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The application must address these cost categories: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, and (7) Other (explain in detail and cost breakdown). For additional questions, please contact Tamara James by telephone at (301) 443–1872 or by email at *tamara.james@ihs.gov.*

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2024 is approximately $75,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards to applicants selected for funding under this announcement.

Anticipated Number of Awards

The IHS anticipates issuing one award under this program announcement.

Period of Performance

The period of performance is for 3 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

The IHS assigned program official will monitor the overall progress of the recipient's execution of the requirements of the award noted below as well as their adherence to the terms and conditions of the cooperative agreements. This includes providing guidance for conference planning, required reports on program activities, developing tools and other products for dissemination to UIOs, interpreting program findings, assisting with evaluations, and overcoming any difficulties or performance issues encountered. The IHS assigned program official must approve all presentations, electronic content, mass emails, and other materials developed by the recipient pursuant to this award and any supplemental award prior to the presentation or dissemination of such materials to any party.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity an applicant must be a 501(c)(3) organization.

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

2. Additional Information on Eligibility

The IHS does not fund concurrent projects. If an applicant is successful under this announcement, any subsequent applications in response to other NUIBH announcements from the same applicant will not be funded. Applications on behalf of individuals (including sole proprietorships) and foreign organizations are not eligible. Applications deemed ineligible will be disqualified from competitive review and funding under this funding opportunity.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

3. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

4. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The DGM will notify the applicant.

Additional Required Documentation

The following documentation is required:

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give the files brief descriptive names. The filenames are key in finding specific documents during the merit review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a single file. Creating a single file creates confusion when trying to find specific documents. This can contribute to delays in processing awards, and could lead to lower scores during the merit review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applications are listed below. An application is incomplete if any of the listed mandatory documents are missing. Incomplete applications will not be reviewed.

- Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

4. Project Abstract Summary form.

- Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed 4 pages). See Section IV.2.B, Budget Narrative for instructions.
- One-page Work Plan Chart.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Organizational Chart.
- 501(c)(3) Certificate.

The documents listed here may be required. Please read this list carefully.

- Letters of Support from the organization's Board of Directors.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Additional documents can be uploaded as Other Attachments in *Grants.gov.* These can include:

- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Map of area identifying project location(s).
- Additional documents to support narrative (for example, data tables, and key news articles).

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 10 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8–1/2 x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria), and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the reviewers will be directed to ignore any content beyond the page limit. The 10-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative:

Part 1—Program Information;

Part 2—Program Planning and Evaluation; and

Part 3—Program Report.

See below for additional details about what must be included in the narrative. The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—2 Pages)

Section 1: Need for Assistance

Describe the organization's current behavioral health program activities, how long the organization has been operating, and how the organization has determined it has the administrative infrastructure to support the cooperative agreement award activities outlined in this announcement. This section must succinctly answer the questions listed under the evaluation criteria listed in Section V.1.A. Need for Assistance.

Part 2: Program Plan and Evaluation (Limit—6 Pages)

Section 1: Program Plan and Approach

Describe fully and clearly the direction the organization plans to take, including how it plans to demonstrate raising the awareness and visibility of

behavioral health issues and deliver each activity required under the cooperative agreement. Include proposed timelines for activities. This section must succinctly answer the questions listed under the evaluation criteria listed in Section V.1.B. Program Plan and Approach.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the organization to raise the awareness and visibility of behavioral health issues among Urban Indians. Include how the recipient will provide an evaluation of their activities, demonstrate impact, and convey accomplishments. This section must succinctly answer the questions listed under the evaluation criteria listed in Section V.1.C. Program Evaluation.

Part 3: Program Report (Limit—2 Pages)

Describe your organization's significant program activities and accomplishments over the past five years associated with the outlined goals under the Recipient Cooperative Agreement Award Activities (refer to Section V.1 B). This section must succinctly answer the questions listed under the evaluation criteria listed in Section V.1.D. Organizational Capabilities, Key Personnel, and Qualifications.

B. Budget Narrative (Limit—7 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the entire project, by year. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item would support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by email at *DGM@ihs.gov.* Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, contact the DGM as soon as possible, by email at *DGM@ihs.gov.*

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov*, you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the waiver approval from the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management

Organizations that are not registered with the System for Award Management (SAM) must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2 to 5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov*, which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime recipient organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include the proposed activities for the entire period of performance. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (10 Points)

1. Describe the needs, or problems, the organization is currently addressing.

2. Describe the current unmet needs/gaps in awareness of behavioral health in Urban Indian communities, and the potential impact of not having a national program with this scope.

3. Describe how this cooperative agreement would benefit the mission of the organization and help achieve the mission of the IHS, as it relates to behavioral health.

4. Provide examples of current, or previous, related experience (award funded or not) that supports the project and justifies the approach.

B. Program Plan and Approach (40 Points)

Describe the purpose of the proposed project. Include a clear statement of the project's goal(s). Discuss how the project addresses current needs or problems in awareness of behavioral health in Urban Indian communities. The proposed project narrative is required to address how the organization will accomplish all six required activities listed below.

1. Facilitate a national forum such as a Behavioral Health Urban Indian Listening Session where all UIOs can express concerns and suggestions related to behavioral health care policy, service delivery, and program development.

2. Provide Urban Indian leadership by participating as active members and representing Urban Indian Health Programs for the National Action Alliance for Suicide Prevention's American Indian/Alaska Native Task Force.

3. Increase awareness and visibility of Urban Indian behavioral health issues through representation and participation at appropriate national conferences.

4. Provide culturally competent educational and technical assistance on strategic planning and other behavioral health, grant writing, or operational needs to increase the capacity of UIOs.

5. Develop and maintain comprehensive information on UIOs. Disseminate information on behavioral health programs, best practices, service delivery, quality improvement, and strategies to all UIOs through such means as an e-newsletter, website, traditional media, or other social media platforms.

6. Develop a quality improvement process, including appropriate evaluation tools to ensure the information developed and disseminated through the project is appropriate, responsive, and useful for addressing the behavioral health needs of Urban Indian communities.

C. Program Evaluation (10 Points)

1. Describe plans to monitor activities such as the success indicators, as based on the description of need, and how the applicant will measure the degree to which objectives have been met that demonstrate progress towards program outcomes and inform future program decisions over the 3-year period of performance.

2. Describe both process and outcome indicators, where possible:

a. Process examples may include activities such as, but not limited to, delivering X number of training workshops in the urban centers (as defined by 25 U.S.C. 1603(2)) of the country, or producing a technical manual for a grant writing workshop.

b. Outcome examples may include measures such as, but not limited to, changes in awareness of behavioral health issues affecting Urban Indians, or changes in Urban Indian participation in suicide prevention activities (for example, increased Hope for Life participation).

3. Describe plans to re-assess the needs, or problems, the organization addressed in this project, including the status of unmet needs/gaps in awareness of behavioral health in Urban Indian communities, and the potential impact of not having a national program with this scope.

4. Describe the data to be collected and the proposed method for collecting it (surveys, questionnaires, observations, or focus groups) and how you will use the data to answer evaluation questions.

5. Identify which position(s) will be responsible for collecting data, measuring progress, and reporting.

6. Describe methods for analyzing the data collected during the cooperative agreement in order to produce evaluation findings.

D. Organizational Capabilities, Key Personnel, and Qualifications (30 Points)

1. Describe the management capability and experience of the applicant organization, and other participating organizations, in administering similar awards and projects.

2. Discuss the organization's experience and capacity to represent Urban Indians and provide culturally appropriate/competent services to Urban Indian communities across the nation, including the organization's role in focusing attention on Urban Indian health care needs.

3. Describe the resources available for the proposed project (for example, facilities, equipment, IT systems, and financial management systems).

4. Describe how program continuity will be maintained if/when there is a change in the operational environment (for example, staff turnover, change in project leadership, change in board membership or elected leaders) to

ensure stability over the life of the cooperative agreement to achieve the project's objectives.

5. Provide a complete list of staff positions for the project, including the Project Director (suggested at a minimum of 0.75 FTE) and other key personnel, showing the role of each and their level of effort and qualifications. Describe any strategies to recruit new staff, as needed.

E. Categorical Budget and Budget Justification (10 Points)

1. Include a line item budget for all expenditures and cost categories, identifying reasonable and allowable costs necessary to accomplish the activities outlined in the project narrative. The budget expenditures should correlate with the scope of work described in the project narrative.

2. Provide a narrative justification of the budget line items, as well as a description of existing resources and other support the applicant expects to receive for the proposed project. Other support is defined as funds or resources, whether Federal, non-Federal, or institutional, in direct support of activities through fellowships, gifts, prizes, in-kind contributions, or non-Federal means. (This should correspond to Item #18 on the applicant's SF–424, Estimated Funding, and SF–424A Budget Information, Section C Non-Federal resources.)

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in this funding announcement. The Review Committee (RC) will review applications that meet the eligibility criteria. The RC will review the applications for merit based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the RC and will not be funded. The DGM will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DBH within 30 days of the conclusion of the review outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Awards:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75.pdf.*
- If you receive an award, HHS may terminate it if any of the conditions in 2 CFR 200.340(a)(1)–(4) are met. Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-sec75-372.pdf.*

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75-subpartF.pdf.*

F. As of August 13, 2020, 2 CFR part 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable award activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 2 CFR 200.414(f) Indirect (F&A) costs,

> any non-Federal entity (NFE) [*i.e.,* applicant] that does not have a current negotiated rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.

Electing to charge a de minimis rate of 10 percent can be used by applicants that have received an approved negotiated indirect cost rate from HHS

or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the award.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please write to *DGM@ihs.gov.*

3. Reporting Requirements

The recipient must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active award, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the recipient organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually. The progress reports are due within 90 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 120 days of the period of performance end date.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance. Recipients are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report. Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Data Collection and Reporting

Recipient will be required to collect and report data pertaining to activities, processes, and outcomes. The IHS will provide additional guidance on data collection and reporting for evaluation purposes. Programmatic reports must be submitted within 90 days after the budget period ends for each project year (specific dates will be listed in the NoA Terms and Conditions). All reporting items will be submitted via GrantSolutions. Recipient is responsible and accountable for accurate information being submitted by required due dates for Data Collection and Reporting.

D. Post Conference Award Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198, 435 (2013), and; *Office of Management and Budget Memorandum M–17–08, Amending OMB Memorandum M–12–12:* All HHS/IHS awards containing funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for ''Conference X'' must be reported in final detailed actual costs within 15 calendar days of the completion of the conference. Cost categories to address should be: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.

E. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal awards to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

F. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance (FFA)

If you receive an award, you must follow all applicable nondiscrimination laws. You agree to this when you register in *SAM.gov.* You must also submit an Assurance of Compliance (HHS–690). To learn more, see *https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html.* Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

G. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://sam.gov/content/fapiis* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *DGM@ihs.gov.*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/*, (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov.*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the program matters may be directed to: Tamara D. James, Ph.D., Division of Behavioral Health, Mail Stop: 8N10, 5600 Fishers Lane, Rockville, MD 20857, Phone: 301–443–1872, Email: *tamara.james@ihs.gov.*

2. Questions on awards management and fiscal matters may be directed to: Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Email: *DGM@ihs.gov.*

3. For technical assistance with *Grants.gov*, please contact the *Grants.gov* help desk at (800) 518–4726, or by email at *support@grants.gov.*

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at *help@grantsolutions.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2023–26504 Filed 12–1–23; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Small Research Grants for Data Analysis, Exploratory/Developmental Research, Clinical Trials Readiness, Phased Innovation, and Clinical Research Course Development in Down Syndrome for the INCLUDE Project 2nd Review.

Date: December 11, 2023.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 29, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26551 Filed 12–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0824]

Request for Information on the Coast Guard Implementation of a Western Alaska Oil Spill Planning Criteria Program

AGENCY: Coast Guard, DHS.

ACTION: Request for information.

SUMMARY: The Don Young Coast Guard Authorization Act of 2022 mandated the Coast Guard create planning criteria for vessel response plans (VRPs) distinct to the Western Alaska and Prince William Sound Captain of the Port zones. These criteria must include minimum response times, improvements to wildlife response, and consideration of prevention and mitigation measures. The Coast Guard seeks input from the public to establish these VRP planning criteria. The information will assist the Coast Guard in potentially developing a regulatory proposal to support the mandate.

DATES: Comments must be received by the Coast Guard on or before March 4, 2024.

ADDRESSES: You may submit comments using the Federal Decision-Making Portal at *www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Lieutenant Commander Adriana Gaenzle, U.S. Coast Guard; telephone 202–372–1226, email *Adriana.J.Gaenzle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

The U.S. Coast Guard views public participation as essential to understanding vessel oil spill response planning and capabilities in remote areas of Alaska. The Coast Guard will consider all information and material received during the comment period. If you submit a comment, please include the docket number for this request for information, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Methods for submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *www.regulations.gov.* To do so, go to *www.regulations.gov,* type USCG–2023–0824 in the search box, and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Public comments will be posted in our online docket at *www.regulations.gov* and can be viewed by following that website's instructions, provided on its Frequently Asked Questions page. We review all comments received, but we will only post comments that address the topic of this request for information. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

The Coast Guard will not issue a separate response to the comments received but will carefully consider each submission. The Coast Guard may also introduce regulatory changes and update policy related to this topic. If the Coast Guard were to undertake any regulatory or policy changes as a result of comments received, that change would be announced separately.

Personal information. We accept anonymous comments. Comments we post to *www.regulations.gov* will include any personal information you have provided. For more information about privacy and submissions to the docket in response to this document, see the Department of Homeland Security's (DHS) eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

II. Abbreviations

APC Alternative Planning Criteria
CFR Code of Federal Regulations
CGAA 2022 Don Young Coast Guard Authorization Act of 2022
CG–543 Coast Guard Office of Vessel Activities
CG–MER Coast Guard Office of Marine Environmental Response Policy
COTP Captain of the Port
D17 Coast Guard Seventeenth District
GAO U.S. Government Accountability Office
MORPAG Maritime Oil-spill Response Plan Advisory Group
MSIB Marine Safety Information Bulletin
NPC National Planning Criteria
NSFCC National Strike Force Coordination Center
NTV Nontank Vessel
NTV final rule Nontank Vessel Response Plans and Other Response Plan Requirements final rule
OPA 90 Oil Pollution Act of 1990
OSRO Oil Spill Removal Organization
RFI Request for information
VRP Vessel response plan

III. Purpose

The U.S. Coast Guard is issuing this request for information (RFI) to collect opinions, ideas, recommendations, and concerns related to the Coast Guard's mandate to create planning criteria for vessel response plans (VRPs) distinct to the Western Alaska and Prince William Sound Captain of the Port (COTP) zones. The Coast Guard is tasked with developing planning criteria suitable for operating areas where response capability is currently inadequate.

The Coast Guard will use the public comments received in response to this RFI to better understand industry limitations, environmental concerns, and tribal concerns.

IV. Background

Under title 33 of the Code of Federal Regulations (CFR) sections 155.1015 and 155.5015, VRPs are required to cover all navigable waters of the United States in which a vessel operates. Several areas under U.S. jurisdiction do not have sufficient resources to meet the national planning criteria (NPC) prescribed under 33 CFR part 155. In remote areas, where adequate response resources are not available, or the available commercial resources do not meet the required planning criteria for where the vessels are operating, a vessel owner or operator may request that the Coast Guard accept an alternative planning criteria (APC).

In August 2009, the Coast Guard Office of Vessel Activities (CG–543) published CG–543 Policy Letter 09–02,[1] ''Industry Guidelines for Requesting Alternative Planning Criteria Approval, One Time Waivers and Interim Operating Authorization,'' to provide guidance to the maritime industry in applying for an APC pursuant to 33 CFR.1065(f).

On September 30, 2013, the U.S. Coast Guard published the Nontank Vessel Response Plans and Other Response Plan Requirements final rule (hereafter the ''NTV final rule'') (78 FR 60124), requiring nontank vessels (NTVs) over 400 gross tons to submit VRPs, which made the NCP in 33 CFR part 155 applicable to thousands of additional vessels across the United States, including geographic areas with limited commercially available response resources. Over time, it became apparent that additional guidance would be useful in addressing compliance issues that had developed from the promulgation of the NTV final rule.

In 2015, Coast Guard Seventeenth District (D17) published a Marine Safety Information Bulletin (MSIB) [2] that provided guidance for APC submissions and expectations within the Western Alaska, Prince William Sound, and Southeast Alaska COTP zones, with a focus on NTV traffic. D17 received a multitude of comments from various sectors of the maritime industry on the MSIB. After reviewing the comments, the Coast Guard chose to update the national APC guidance rather than singularly focusing on APC guidelines specific to Alaska.

On October 12, 2017, the U.S. Coast Guard Office of Marine Environmental Response Policy (CG–MER) issued CG–MER Policy Letter 01–17, ''Alternative Planning Criteria National Guidelines for Vessel Response Plans'' to provide consistent guidelines nationally for evaluating proposed APCs, applicable to tank and NTVs. That policy letter was canceled with the publication, on March 15, 2023, of CG–MER Policy Letter 01–17, Change 1,[3] ''Change 1 to Alternative

[1] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/Policy%20Letters/2009/CG-543_pol09-02.pdf* (last accessed November 14, 2023).

[2] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2015/008_15_8-26-2015.pdf* (last accessed November 14, 2023).

[3] *https://homeport.uscg.mil/Lists/Content/Attachments/2781/CG-MER%20Policy%20Letter%2001-17%20Change%201%20-%Mar%202023%20(Signed).pdf* (last accessed November 15, 2023).

Planning Criteria National Guidelines for Vessel Response Plans'' to reduce the administrative burden on industry and clarify the APC submission process.

From 2019–2020, the U.S. Government Accountability Office (GAO) conducted an audit to review the VRP program. The GAO provided CG–MER with recommendations, including ensuring that resources identified in a VRP are available to respond, and retaining Coast Guard personnel with local knowledge when evaluating APCs. In April of 2020, the U.S. Coast Guard established the Maritime Oil-spill Response Planning Advisory Group (MORPAG) to analyze processes internal to Coast Guard management of VRPs and APCs, and that final report was submitted to CG–MER in March 2023.

In September 2020, the GAO issued their final report analyzing the Coast Guard's processes for reviewing, evaluating, and approving VRPs. That audit report, ''Improved Analysis of Vessel Response Plan Use Could Help Mitigate Marine Pollution Risk,'' GAO–20–554, can be found online at *https://www.gao.gov/assets/720/710034.pdf.*

The Don Young Coast Guard Authorization Act of 2022 (CGAA 2022),[4] passed in December of 2022 (Public Law 117–263), includes a section designed to address the specific needs of Western Alaska. Section 11309 mandates the Coast Guard create a Western Alaska Oil Spill Planning Criteria Program to include vessel oil spill planning criteria specific to Western Alaska.

On March 30, 2023, the Coast Guard published an RFI seeking public input on the MORPAG recommendations (88 FR 19159) [5] to improve the VRP program and policies and enhance the Coast Guard's mission in marine environmental protection from oil spills.

In April 2023, CG–MER established the Marine Environmental Response Criteria Action Team (MERCAT) to analyze, develop, and implement Section 11309 of the CGAA 2022, Western Alaska Oil Spill Planning Criteria, as well as reconcile MORPAG recommendations into the VRP program, where appropriate. As outlined in the CGAA 2022, Western Alaska Oil Spill planning criteria should include:

(1) Mechanical oil spill response resources that are required to be located within any part of the area of responsibility of the Western Alaska COTP zone or the Prince William Sound COTP zone for where it has been determined that NPCs are inappropriate for a vessel operating in that area.

(2) Response times for mobilization of oil spill response resources and arrival on the scene of a worst-case discharge or substantial threat of such a discharge.

(3) Pre-identified vessels for oil spill response that are capable of operating in the ocean environment.

(4) Ensuring the availability of at least one Oil Spill Removal Organization (OSRO) that is classified by the Coast Guard and that:

(a) Can respond in all operating environments in that area.

(b) Controls dedicated and nondedicated oil spill response resources through ownership, contracts, agreements, or other approved means, sufficient—

(i) To mobilize and sustain a response to a worst-case discharge of oil and

(ii) To contain, recover, and temporarily store discharged oil.

(c) Has pre-positioned oil spill response resources in strategic locations throughout the area in a manner that ensures the ability to support response personnel, marine operations, air cargo, or other related logistics infrastructure.

(d) Has temporary storage capability using both dedicated and non-dedicated assets located in the area.

(e) Has non-mechanical oil spill response resources capable of responding to a discharge of persistent oil and a discharge of nonpersistent oil, whether the discharged oil was carried by a vessel as fuel or cargo; and

(f) Has wildlife response resources for primary, secondary, and tertiary responses to support carcass collection, sampling, deterrence, rescue, and rehabilitation of birds, sea turtles, marine mammals, fishery resources, and other wildlife.

(5) With respect to tank barges carrying non-persistent oil in bulk as cargo, oil spill response resources that are required to be carried on board.

(6) Specifying a minimum length of time that approval of a VRP using Western Alaska planning criteria is valid.

(7) Managing wildlife protection and rehabilitation, including identified wildlife protection and rehabilitation resources in the area.

Additional considerations for Western Alaska Oil Spill planning criteria may include:

(1) Vessel routing measures consistent with international routing measure deviation protocols.

(2) Maintenance of real-time continuous vessel tracking, monitoring, and engagement protocols with the ability to detect and address vessel operation anomalies.

(3) Creation of subregions where response needs and capabilities may require different planning criteria.

V. Request for Information

The Coast Guard requests relevant comments and information from the public regarding the mandate to create planning criteria unique for VRPs in the Western Alaska COTP zone. We will use feedback provided to develop proposed planning criteria for public comment. We ask that you also keep in mind the Coast Guard's mission to ensure a safe, secure, and resilient marine transportation system that facilitates commerce and protects national security interests. Commenters should feel free to answer as many questions as they would like, but also provide specificity, detail, and the logic behind any finding or numerical estimates. Listed below are questions to guide your responses. We want and encourage your feedback.

(1) Should NPC remain the standard where response capability is sufficient to support a vessels' planning requirements?

(2) What criteria should the Coast Guard use to determine realistic response times for resources, while ensuring an effective response in Western Alaska?

(3) With the potential growth in maritime shipping in the arctic environment, how can the planning criteria be written to ensure response capability increases with the growth and additional risk presented by vessels operating in Western Alaska?

(4) OSRO classification is not determined based on vessels' response requirements, and participation in the OSRO classification program is voluntary. Because of this, VRP compliance cannot be determined through OSRO classification. Should the OSRO classification program be changed so that it directly affects VRP compliance determination?

(5) Should the Coast Guard establish a unique classification scheme for OSROs in Alaska based on the proposed Western Alaska Planning Criteria?

(6) Since NPC is the current planning standard, should the Coast Guard create subregions in Western Alaska to address different planning criteria based on operating environment, traffic patterns, and response capability to ensure NPC remains the standard where it is achievable?

(7) Should the Coast Guard establish subregions to proactively plan for expected vessel traffic increases in

[4] *https://www.govinfo.gov/content/pkg/CRPT-117hrpt282/html/CRPT-117hrpt282.htm* (last accessed November 14, 2023).

[5] *https://www.federalregister.gov/documents/2023/03/30/2023-06611/request-for-information-on-coast-guard-vessel-response-plan-and-maritime-oil-spill-response-plan.*

certain areas? If so, how should we do this?

(8) How could planning criteria be written for a vessel's destination instead of requiring planning for multiple subregions on a vessel's route?

(9) Some resources that response providers rely on are not owned or controlled by the provider. Some may be used for other purposes or may be resources of opportunity and not always be immediately available to respond. Should regulations require periodic audits of a providers' response resources to ensure the resources identified in a VRP are available and capable of responding within the required time?

(10) How should the criteria be written to ensure an OSRO has wildlife response resources? What types of wildlife response resources would be appropriate, and how would the Coast Guard verify these?

(11) How should the Coast Guard ensure that all stakeholders' and affected parties' concerns have been heard or received? What recommendations do you have to maximize outreach and understanding of any new planning standard?

(12) APC is intended to minimize the impact to maritime commerce where response capabilities in remote areas are insufficient for VRP compliance. In situations where a vessel needs to operate in a remote area and cannot comply with Western Alaska Planning Criteria, should APC be an option for VRP approval, or should the Coast Guard deny a vessel from operating there? Please describe any costs you may incur because of this change.

(13) If the Coast Guard needs to establish one set of Western Alaska Planning Criteria for all areas of the Western Alaska and Prince William Sound COTP zones where NPC cannot be met, given the current variation in response capabilities across these areas, how could the Coast Guard design these planning criteria to ensure that greater response capability is maintained in those areas where it is needed?

(14) Should the criteria require response gear on all tank barges or only tank barges carrying non-persistent oil?

(15) As a tank or NTV owner or operator who owns or operates vessel(s) that carry the types of oil defined in 33 CFR part 155, how would the adoption of the Western Alaska (Western Alaska COTP zone in addition to the Prince William Sound COTP zone) oil spill planning criteria, or the adoption of subregions for planning purposes, impact your business? Please describe in detail the positive (beneficial) or negative (costs) economic impacts this would have on your business.

(16) What would you need to do to meet the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion that you are not already doing under the national planning criteria in 33 CFR part 155? For example, would you need to hire new employees, implement additional training, drills, and exercises, purchase new equipment, and keep records (time and paperwork costs) to meet the oil spill planning criteria described in the 2022 Coast Guard Authorization Act?

For questions 17–22, please identify if the response is specific to tank, NTV, or both.

(17) If you are a tank or NTV vessel owner, and taking into consideration the current regulations for VRPs for tank and NTV vessels in 33 CFR part 155, what would you specifically need to do to your current VRP to comply with the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion, which includes the surrounding areas, as described in the Coast Guard Authorization Act of 2022? What additional costs would be incurred beyond the existing VRP regulations or under the national planning criteria in 33 CFR part 155?

(18) If you are a small entity (small business, small organization, or small governmental jurisdiction) that owns tank or NTV vessels, how would the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion and the surrounding areas impact your business? Please be specific and describe any positive (beneficial) or negative (costs) impacts this would have on your business or organization.

(19) As a tank or NTV vessel owner or operator, would adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion affect your insurance costs and liability coverage? If so, please be specific and describe any economic impacts this may have.

(20) As a tank or NTV vessel owner or operator, if the planning criteria required in a subregion were more stringent than that of the Western Alaska oil spill planning criteria, what would be the economic impact (costs and benefits, if any) of this difference on your business? Please be specific and describe in detail the nature of this difference on your business.

(21) As a tank or NTV vessel owner or operator, would you need to modify your current response plan, through contract or other means, to ensure the availability of an OSRO to respond to a shoreline oil spill in the Western Alaska area or Western Alaska subregion, as described in the CGAA 2022? Please be specific in your response and state why you believe this may or may not be necessary.

(22) As a tank or NTV vessel owner or operator, what would it cost to develop and submit a new VRP that contains APC as defined in 33 CFR sections155.1065 and 155.5067 for the Western Alaska oil spill planning criteria or planning criteria for a Western Alaska subregion and the surrounding areas?

(23) If you are a Tribal government, how would the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion and the surrounding areas impact your government? Please describe in detail the positive (beneficial) or negative economic and environmental impacts (costs) this would have on your government.

(24) If you are an OSRO, how would the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion affect your capability to respond to an oil spill in these areas or subregion? What capital costs would you incur as an OSRO to meet the planning criteria in these areas or subregion as described in the CGAA 2022? Please include the time it would take for additional recordkeeping, if applicable, and the costs associated with any paperwork.

(25) As an OSRO, do you currently have adequate resources (salvage and firefighting equipment, lightering, and so on) and capabilities to respond to an oil spill in the Western Alaska area or Western Alaska subregion as described in the CGAA 2022? With your current resources and capabilities, would you be able to respond to an average most probable discharge, a maximum most probable discharge, or a worst-case discharge of oil, as defined in 33 CFR part 155, in these areas? If not, please describe in detail what resources you would need to obtain or capabilities you would need to develop to respond to an oil spill in these areas, and the costs associated with these changes.

(26) As an OSRO, would you be able to respond to a discharge of oil with the adoption of the Western Alaska oil spill planning criteria or Western Alaska subregion and the surrounding areas in the response times given in 33 CFR part 155? If not, please describe in detail why these response times would not be achievable in these areas, and what would be the appropriate response times you think would be achievable in these areas. Would pre-positioning of oil spill response resources be necessary for the Western Alaska area or Western Alaska subregion as described in the

CGAA 2022? What would be the additional costs to your business/organization for changes in the response times in these areas?

(27) Please specify, as a tank or NTV vessel owner or operator, an OSRO, or any other party that may be affected by the adoption of the Western Alaska oil spill planning criteria or a Western Alaska subregion and the surrounding areas, please describe in detail any other economic impacts, not stated previously, that this change may have on your business beyond the current requirements listed in 33 CFR part 1.

(28) Are there any other positive or negative environmental impacts from this potential action? If so, please provide detail as to how and what would be impacted. To the degree possible, please provide the data, impact assessments, and other pertinent background information necessary to understand and reproduce your results.

Dated: November 28, 2023.

D.S. Tulis,

Director, Emergency Management, U.S. Coast Guard.

[FR Doc. 2023–26533 Filed 12–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA- 2023–0014; OMB No. 1660–NW164]

Agency Information Collection Activities: Proposed Collection; Comment Request; an Investigation of the Effect of Disaster Response and Recovery on Perceived Stress and Emotional Trauma

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an Investigation of the Effect of Disaster Response and Recovery on Perceived Stress and Emotional Trauma. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the effect of disasters on the mental health of emergency managers at local, State, and Federal levels.

DATES: Comments must be submitted on or before February 2, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0014. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Megan Corley, Supervisory Psychologist, FEMA Mental Health, at *fema-mentalhealth@fema.dhs.gov* or (202) 880–7506. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: A study to investigate the effect of disaster response and recovery on emergency managers was requested by Congress in the Consolidated Appropriations Act, 2021 (Pub. L. 116–260). 29 CFR part 1960, entitled ''Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters'', contains special provisions to assure safe and healthful working conditions for Federal employees; requiring the head of each Federal Agency to maintain an effective and comprehensive occupational safety and health program consistent with section 6 of the Occupational Safety and Health Administration Act of 1970 (Pub. L. 91–596) (OSHA Act). Furthermore, 5 U.S.C. 7902 requires the head of each agency to develop and support organized safety promotion to reduce accidents and injuries to its employees, encourage safe practices, and eliminate hazards and risks. Under 5 U.S.C. 7902(e), Agencies must also keep a record of injuries and accidents.

This program was established to improve the mental health of FEMA's, as well as State and local, emergency managers in response to the effects of stress caused by disasters. This data collection is needed to comply with the OSHA Act, 5 U.S.C. 7902 requiring the monitoring, reporting, and mitigation of workplace injuries, and with the request from Congress to undertake this survey.

Collection of Information

Title: An Investigation of the Effect of Disaster Response and Recovery on Perceived Stress and Emotional Trauma.

Type of Information Collection: New information collection.

OMB Number: 1660–NW164.

FEMA Forms: FEMA Form FF–119–FY–23–100, FEMA Congressional Mental Health Emergency Manager Wellness Study Survey.

Abstract: This information collection supports a study to investigate the effect of disaster response and recovery on emergency managers that was requested by Congress in 2022. This is a voluntary survey that will be collected electronically with approximately 38 questions pertaining to the individuals' experience and demographics, as well as their perceptions of emotional trauma and stress symptoms while supporting a disaster response or recovery. Prior to seeing these questions, participants will see an informed consent screen that outlines the nature of the study, risks, benefits, and Institutional Review Board (IRB) information. Participants may choose to end the survey at any time without questions being asked. Participants are given mental health resources to support them in the event of emotional triggering.

Affected Public: State, local, and Tribal governments.

Estimated Number of Respondents: 378.

Estimated Number of Responses: 378.

Estimated Total Annual Burden Hours: 189.

Estimated Total Annual Respondent Cost: $11,712.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $306,752.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–26563 Filed 12–1–23; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0023]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Foundational Cybersecurity Assessment

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice of information collection; request for comment; new collection (request for a new OMB Control Number 1670–NEW).

SUMMARY: CISA Cybersecurity Division (CSD) submits the following information for a new collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until February 2, 2024. Submissions received after the deadline for receiving comments may not be considered.

ADDRESSES: You may submit comments, identified by docket number CISA–2023–0023, by the following the instructions below for submitting comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

Instructions: All comments received must include the words ''Cybersecurity and Infrastructure Security Agency'' and docket number CISA–2023–0023 for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Nicewick, 703–203–0634, *CISA.CSD.JCDC_MS-ISAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Foundational Cybersecurity Assessment is to guide State, Local, Territorial, and Tribal (SLTT) entities through the first 12–18 months of their cybersecurity plan development. The assessment contains 32 questions that are aligned to the National Institute of Standards and Technology (NIST) Cybersecurity Framework and the Center for internet Security (CIS) CIS Critical Security Controls. Although not directly related, at least 20 of the questions on the Nationwide Cybersecurity Review (NCSR) will be covered by responses to the Foundational Cybersecurity Assessment, allowing it to serve as an excellent ''assessment on-ramp'' for entities who have not yet been able to tackle and complete the NCSR. The entity participating in the Foundational Cybersecurity Assessment is positioned to take the NCSR and continue their security maturity journey year-over-year following participation in the Foundational Cybersecurity Assessment. CISA is authorized to receive and analyze cyber threat indicators, defensive measures, cybersecurity risks, and incidents, and to use this information to make recommendations to federal and non-federal entities regarding protective and support measures to reduce cyber risk. See 6 U.S.C. 659(c)(1),(9); 652(e)(1)(C). The Foundational Assessment implements these authorities with respect to CISA's analysis of and support to SLTT entities. This is a NEW information collection. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

Title of Collection: Foundational Cybersecurity Assessment.

OMB Control Number: 1670–NEW.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial entities.

Number of Respondents for Foundational Assessment: 100.

Estimated Time per Respondent Respondents for Foundational Assessment: 1 hour.

Total Burden Hours: 100.

Annualized Respondent Cost: $7,541.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $182,459.

Robert J. Costello,

Chief Information Officer, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–26543 Filed 12–1–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0225; FXIA16710900000–234–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity

otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by January 3, 2024.

ADDRESSES:

Obtaining Documents: The applications, supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2023–0225.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2023–0225.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2023–0225; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Gulf Breeze Zoo, Gulf Breeze, FL; Permit No. PER5267819

The applicant requests authorization to import six captive-born golden-headed lion tamarins (*Leontopithecus chrysomelas*) from the Nature Resource Network s.r.o. in the Czech Republic, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Columbus Zoo and Aquarium, Powell, OH; Permit No. PER5300236

The applicant requests authorization to import a captive-born Asian elephant (*Elephas maximus*) from the African Lion Safari in Ontario, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2023–26546 Filed 12–1–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24LB00TZ90100; OMB Control Number 1028–0082]

Agency Information Collection Activities; U.S. Geological Survey Bird Banding Permit Applications and Band Recovery Reports

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a renewal of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 3, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192 or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0082, U.S. Geological Survey Bird Banding Permit Applications and Band Recovery, in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Antonio Celis-Murillo by email at *acelis-murillo@usgs.gov,* or by telephone at 301–497–5808. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 1, 2023 (88 FR 60482). One comment was received from the Ornithological Council (Laura Bies, Executive Director). Based on this feedback, we are adjusting the time burden for the Application for Federal Bird Banding or Marking Permit from 30 minutes to 60 minutes, raising the total burden by 40 hours to 4,734 hours.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The Bird Banding Program is the responsibility of the USGS Bird Banding Laboratory (BBL). The BBL plays a critical role in permitting the banding and marking of wild birds and is responsible for storing and maintaining data on banded and marked birds. This effort requires coordination between banders and people who later encounter the marked birds to ensure the data are available for later analyses. To achieve these goals, the BBL collects information using three forms: the Application for Federal Bird Banding or Marking Permit, the Federal Bird Banding or Marking Permit Renewal Form, and the Bird Banding Recovery Report.

Title of Collection: Bird Banding Permit Applications and Band Recovery Reports.

OMB Control Number: 1028–0082.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: General public.

Total Estimated Number of Annual Respondents: 92,000.

—*Bird Banding Permit Application: 80 respondents*

—*Bird Banding Permit Renewal: 400 respondents*

—*Band Recovery Form: 91,520 respondents*

Total Estimated Number of Annual Responses: 93,150.

—*Bird Banding Permit Application: 80 responses*

—*Bird Banding Permit Renewal: 400 responses*

—*Band Recovery Form: 92,670: responses*

Estimated Completion Time per Response: 3 to 60 minutes, depending on form used.

—*Bird Banding Permit Application: 60 minutes*

—*Bird Banding Permit Renewal: 3 minutes*

—*Band Recovery Form: 3 minutes*

Burden Hours.

—*Bird Banding Permit Application:* 80 hours

—*Bird Banding Permit Renewal:* 20 hours

—*Band Recovery Report Form:* 4,634 hours

Total Estimated Number of Annual Burden Hours: 4,734 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Antonio Celis-Murillo,

Chief, USGS Bird Banding Laboratory.

[FR Doc. 2023–26566 Filed 12–1–23; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Request for Nominations of Members To Serve on the Bureau of Indian Education Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act and the Individuals with Disabilities Education Act of 2004 (IDEA), the Bureau of Indian Education (BIE) requests nominations of individuals to serve on the Advisory Board for Exceptional Children (Advisory Board). There will be three positions available to specifically serve in the areas of Indian persons with disabilities; or State education officials; or State Interagency Coordinating Councils (for States having Indian reservations). Board members shall serve a staggered term of two or three years from the date of their appointment. The BIE will consider nominations received in response to this request for nominations, as well as other sources.

DATES: Please submit nominations by Wednesday, January 31, 2024.

ADDRESSES: Please submit nominations to Ms. Jennifer Davis, Designated Federal Officer (DFO), Bureau of Indian Education, Division of Performance and Accountability, 2600 N Central Ave., Suite 800, Phoenix, AZ 85004; email to *jennifer.davis@bie.edu;* or fax to (602) 265–0293.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis, DFO, *jennifer.davis@bie.edu;* (202) 860–7845.

SUPPLEMENTARY INFORMATION: The Advisory Board was established in accordance with the Federal Advisory Committee Act, Public Law 92–463. The following provides information about the Committee, the membership and the nomination process.

1. Objective and Duties

(a) Members of the Advisory Board will provide guidance, advice and recommendations with respect to special education and related services for children with disabilities in BIE funded schools in accordance with the requirements of IDEA;

(b) The Advisory Board will:

(1) Provide advice and recommendations for the coordination of services within the BIE and with other local, State and Federal agencies;

(2) Provide advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities;

(3) Serve as advocates for American Indian students with special education needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming;

(4) Provide advice and recommendations for the preparation of information required to be submitted to the Secretary of Education under 20 U.S.C. 1411 (h)(2);

(5) Provide advice and recommend policies concerning effective inter/intra agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities; and

(6) Will report and direct all correspondence to the Assistant Secretary—Indian Affairs through the Director, BIE with a courtesy copy to the Designated Federal Officer (DFO).

2. Membership

(a) Pursuant to 20 U.S.C. 1411(h)(6), the Advisory Board will be composed of up to fifteen individuals involved in or concerned with the education and provision of services to American Indian infants, toddlers, children, and youth with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one member representing each of the following interests: American Indians with disabilities; teachers of children with disabilities; American Indian parents or guardians of children with disabilities; service providers; State education officials; local education officials; State interagency coordinating councils (for States having Indian reservations); Tribal representatives or Tribal organization representatives; and other members representing the various divisions and entities of the BIE.

(b) The Assistant Secretary—Indian Affairs may provide the Secretary of the Interior recommendations for the chairperson; however, the chairperson and other Advisory Board members will be appointed by the Secretary of the Interior. Advisory Board members shall serve staggered terms of two years or three years from the date of their appointment.

3. Miscellaneous

(a) Members of the Advisory Board will not receive compensation, but will be reimbursed for travel, including subsistence, and other necessary expenses incurred in the performance of their duties in the same manner as persons employed intermittently in Government Service under 5 U.S.C. 5703.

(b) A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the appropriate ethics official. Compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

(c) The Advisory Board meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary—Indian Affairs or the DFO.

(d) All Advisory Board meetings are open to the public in accordance with the Federal Advisory Committee Act regulations.

4. Nomination Information

(a) Nominations are requested from individuals, organizations, and federally recognized Tribes, as well as from State Directors of Special Education (within the 23 States in which BIE-funded schools are located) concerned with the education of Indian children with disabilities as described above.

(b) Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. Such knowledge and expertise are needed to provide advice and recommendations to the BIE regarding the needs of American Indian children with disabilities.

(c) A summary of the candidates' qualifications (resume or curriculum vitae) must be included with a completed nomination application form, which is located on the Bureau of Indian Education website. Nominees must have the ability to attend Advisory Board meetings, carry out Advisory Board assignments, participate in teleconference calls, and work in groups.

(d) The Department of the Interior is committed to equal opportunities in the workplace and seeks diverse Committee

membership, which is bound by Indian Preference Act of 1990 (25 U.S.C. 472).

5. Basis for Nominations

If you wish to nominate someone for appointment to the Advisory Board, please do not make the nomination until the person has agreed to have his or her name submitted to the BIE for this purpose. A person can also self-nominate.

6. Nomination Application

Please submit a complete application form and a copy of the nominee's resume or curriculum vitae to the DFO by Wednesday, January 31, 2024. The nomination application form can be found on the BIE website at *https://www.bie.edu/sites/default/files/inline-files/Advisory-Board-Membership-Nomination-Form%20%28Expires%206-30-24%29.pdf.*

7. Information Collection

This collection of information is authorized by OMB Control Number 1076–0179, ''Solicitation of Nominations for the Advisory Board for Exceptional Children,'' with a June 30, 2024, expiration date.

(Authority: 5 U.S.C. ch. 10; 20 U.S.C. 1400 *et seq.*)

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–26518 Filed 12–1–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1304]

Bulk Manufacturer of Controlled Substances Application: Element Materials Technology Santa Rosa

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Element Materials Technology Santa Rosa has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 2, 2024. Such persons may also file a written request for a hearing on the application on or before February 2, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on November 1, 2023, Element Materials Technology Santa Rosa, 3331 Industrial Drive, Suite B, Santa Rosa, California 95403–2062, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Fentanyl	9801	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of the listed controlled substances in bulk form. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–26553 Filed 12–1–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1300]

Importer of Controlled Substances Application: Caligor Coghlan Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Caligor Coghlan Pharma Services, has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 3, 2024. Such persons may also file a written request for a hearing on the application on or before January 3, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 13, 2023, Caligor Coghlan Pharma Services, 1500 Business Park Drive, Unit B, Bastrop, Texas 78602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Dimethyltryptamine	7435	I

The company plans to import the listed controlled substance as finished dosage units for use in clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–26558 Filed 12–1–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1305]

Importer of Controlled Substances Application: Restek Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Restek Corporation has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 3, 2024. Such persons may also file a written request for a hearing on the application on or before January 3, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 6, 2023, Restek Corporation, 110 Benner Circle, Bellefonte, Pennsylvania 16823–8433, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amineptine	1219	I
Mesocarb	1227	I
3-Fluoro-N-methylcathinone (3–FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4–FMC)	1238	I
Para-Methoxymethamphetamine (PMMA), 1-(4-1245 I N methoxyphenyl)-N-methylpropan-2-amine	1245	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4–MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
Methiopropamine (N-methyl-1-(thiophen-2-yl)propan-2-1478 I N amine)	1478	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
4,4′-Dimethylaminorex	1595	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR–18 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) 7008 I N SR–18 and RCS–8 indole) SR–19 (1–P	7008	I
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR–144 and XLR11 ([1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone)	7011	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
1-(4-Fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-7014 I N FUB–144 tetramethylcyclopropyl)methanone	7014	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB–AMB, MMB–FUBINACA, AMB–FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate)	7021	I
AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-)3-carboxamide	7023	I
THJ–2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
5F–AB–PINACA (N-(1-amino-3methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7025	I
AB–CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB–CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F–AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F–ADB; 5F–MDMB–PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido) 3,3-dimethylbutanoate)	7036	I
5F–MDMB–PICA	7041	
MDMB–CHMICA, MMB–CHMINACA	7042	I
Methyl 2–7043 I N (1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3dimethylbutanoate)	7043	I
MMB–CHMICA	7044	I
FUB–AKB48; FUB–APINACA; AKB48 N-(4–FLUOROBENZYL)	7047	I

Controlled substance	Drug code	Schedule
APINACA and AKB48	7048	I
5F–APINACA, 5F–AKB48	7049	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
1-(5-Fluoropentyl)-1H-indazole-3-carboxamide	7083	I
5F–CUMYL–P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4–CN–CUMYL–BUTINACA	7089	I
SR–19 (1-Pentyl-3-[(4-methoxy)-benzoyl] indole	7104	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR–144	7144	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7221	I
PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-methyl-alpha-ethylaminopentiophenone (4–MEAP)	7245	I
N-ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one 7286 I N MXE, methoxetamine (methoxetamine)	7286	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine	7348	I
Marihuana extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I
Mescaline	7381	I
2C–T–2, (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
Peyote	7415	I
5-Methoxy-N–N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-a-PVP)	7443	I
4′-methyl-alpha-pyrrolidinohexiophenone (MPHP)	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alphapyrrolidinopropiophenone)	7498	I
2C–D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C–E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C–H (2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C–I (2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C–C (2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C–N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C–P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C–T–4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I

Controlled substance	Drug code	Schedule
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethylpentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
Alpha-Pyrrolidinohexanophenone	7544	I
α-PVP (alpha-pyrrolidinopentiophenone)	7545	I
α-PBP (alpha-pyrrolidinobutiophenone)	7546	I
Ethylone	7547	I
PV8, alpha-Pyrrolidinoheptaphenone	7548	I
AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Brorphine	9098	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U–47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH–7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT–45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Isotonitazene (N,N-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro nitro-1H-benzimidazol-1-yl)ethan-1-amine)	9614	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I

Controlled substance	Drug code	Schedule
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Butonitazene	9751	I
Flunitazene	9756	I
METONITAZENE	9757	I
N–PYRROLIDINO ETONITAZENE; ETONITAZEPYNE	9758	I
PROTONITAZENE	9759	I
METODESNITAZENE	9764	I
ETODESNITAZENE; ETAZENE	9765	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-Methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Para-Methylfentanyl	9817	I
4′-Methyl Acetyl fentanyl	9819	I
Ortho-Methyl methoxyacetyl fentanyl	9820	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	I
Ocfentanil	9838	I
Thiofuranyl fentanyl	9839	I
Valeryl fentanyl	9840	I
Phenyl fentanyl	9841	I
Beta′-Phenyl fentanyl	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide)	9843	I
Crotonyl fentanyl	9844	I
Cyclopropyl Fentanyl	9845	I
ortho-Fluorobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide; also known as 2-fluorobutyryl fentanyl).	9846	I
Cyclopentyl fentanyl	9847	I
Ortho-Methyl acetylfentanyl	9848	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl Carbamate	9851	I
ORTHO–FLUOROACRYL FENTANYL	9852	I
ORTHO–FLUOROISOBUTYRYL FENTANYL	9853	I
Para-Fluoro furanyl fentanyl	9854	I
2′-Fluoro ortho-fluorofentanyl	9855	I
Beta-Methyl fentanyl	9856	I
Zipeprol	9873	I
Amphetam	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II

Controlled substance	Drug code	Schedule
Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration (FDA)	7365	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Norfentanyl	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Coca Leaves	9040	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine-intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Oliceridine	9245	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Dihydroetorphine	9334	II
Opium, raw	9600	II
Opium extracts	9610	II
Opium fluid extract	9620	II
Opium tincture	9630	II
Opium, powdered	9639	II
Opium, granulated	9640	II
Levo-alphacetylmethadol	9648	II
Opium poppy	9650	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Poppy Straw Concentrate	9670	II
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to import the listed controlled substances for the use in the manufacture of exempted certified reference materials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–26555 Filed 12–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension without change of ''General Inquiries to State Agency Contacts.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 2, 2024.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands (hereinafter referred to as the ''States'') in order to jointly conduct BLS/State Labor Market Information (LMI) and Occupational Safety and Health Statistics (OSHS) cooperative statistical programs, which themselves have been approved by OMB separately, as follows:

Current Employment Statistics	1220–0011
Local Area Unemployment Statistics	1220–0017
Occupational Employment and Wage Statistics	1220–0042
Quarterly Census of Employment and Wages	1220–0012
Annual Refiling Survey	1220–0032
Labor Market Information Cooperative Agreement	1220–0079
Multiple Worksite Report	1220–0134
Survey of Occupational Injuries and Illnesses	1220–0045
Census of Fatal Occupational Injuries	1220–0133
BLS OSHS Cooperative Agreement	1220–0149

To ensure the timely flow of information and to be able to evaluate and improve the BLS/State cooperative programs' management and operations, it is necessary to conduct ongoing communications between the BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, operations, or administrative issues, questions and dialogue are crucial to the successful implementation of these programs.

II. Current Action

Office of Management and Budget clearance is being sought for an extension of General Inquiries to State Agency Contacts. Information collected under this clearance is used to support the administrative and programmatic needs of jointly conducted BLS/State LMI and OSHS cooperative statistical programs.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: General Inquiries to State Agency Contacts.

OMB Number: 1220–0168.

Type of Review: Extension without change.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 54.

Frequency: As needed.

Total Responses: 23,890.

Average Time per Response: 40 minutes.

Estimated Total Burden Hours: 15,927 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on November 27, 2023.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2023–26509 Filed 12–1–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0026]

Regulations Containing Procedures for the Handling of Retaliation Complaints; Revision of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to revise the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Regulations Containing Procedures for the Handling of Retaliation Complaints.

DATES: Comments must be submitted (postmarked, sent, or received) by February 2, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2012–0026) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The Department of Labor (DOL), through the Occupational Safety and Health Administration (OSHA), is responsible for investigating alleged violations of whistleblower protection provisions contained in certain Federal statutes (provisions) that prohibit retaliatory action by employers against employees who report unsafe or unlawful practices. These provisions prohibit an employer from discharging or otherwise retaliating against an employee because the employee engages in any of the protected activities specified in the relevant statute. This information collection covers the whistleblower provisions under the following statutes: (1) the Occupational Safety and Health Act, 29 U.S.C. 660(c); (2) the Surface Transportation Assistance Act, 49 U.S.C. 31105; (3) the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; (4) the International Safe Container Act, 46 U.S.C. 80507; (5) the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); (6) the Energy Reorganization Act, as amended, 42 U.S.C. 5851; (7) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610; (8) the Federal Water Pollution Control Act, 33 U.S.C. 1367; (9) the Toxic Substances Control Act, 15 U.S.C. 2622; (10) the Solid Waste Disposal Act, 42 U.S.C. 6971; (11) the Clean Air Act, 42 U.S.C. 7622; (12) the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; (13) the Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act (SOX), 18 U.S.C. 1514A; (14) the Pipeline Safety Improvement Act, 49 U.S.C. 60129; (15) the National Transit Systems Security Act, 6 U.S.C. 1142; (16) the Federal Railroad Safety Act, 49 U.S.C. 20109; (17) the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; (18) the Affordable Care Act, 29 U.S.C. 218C; (19) the Consumer Financial Protection Act, 12 U.S.C. 5567; (20) the Seaman's Protection Act, 46 U.S.C. 2114; (21) FDA Food Safety and Modernization Act, 21 U.S.C. 399d; (22) the Moving Ahead for Progress in the 21st Century Act (MAP–21), 49 U.S.C. 30171; (23) the Taxpayer First Act, 26 U.S.C. 7623(d); (24) the Criminal Antitrust Anti-Retaliation Act, 15 U.S.C. 7a–3; and (25) the Anti-Money Laundering Act, 31 U.S.C. 5323(a)(5), (g), & (j). Information collected under these whistleblower provisions and the related regulations is necessary for OSHA officials to investigate complaints to determine if a potential violation has occurred.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB Revise the approval of the information collection requirements contained in Regulations Containing Procedures for the Handling of Retaliation Complaints. The agency is requesting an adjustment increase in Burden Hours from 10,126 hours to 17,387 hours, a difference of 7,261 hours. This increase is due to the an increase in the agency's estimate of complaints received.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Revision of a currently approved collection.

Title: Regulations Containing Procedures for the Handling of Retaliation Complaints (29 CFR parts 24, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1991, and 1992).

OMB Control Number: 1218–0236.

Affected Public: Business or other for-profits.

Number of Respondents: 17,387.

Number of Responses: 17,387.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 17,387.

Estimated Cost (Operation andMaintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2012–0026). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–26527 Filed 12–1–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0023]

Overhead and Gantry Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in Overhead and Gantry Cranes Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by February 2, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0023) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The paperwork provisions of the Standard specify requirements for: marking the rated load of cranes; preparing certification records to verify the inspection of the crane hooks, hoist chains, and rope; and preparing reports of rated load tests for repaired hooks or modified cranes. Records and reports must be maintained and disclosed upon request.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary

for the proper performance of the agency's functions to protect workers, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the Information Collection Requirements contained in the Overhead and Gantry Cranes Standard. After consulting with subject matter experts, OSHA has decided to retain the current number of burden hours of 321,345 for this Information Collection Request. There are no adjustments or program changes.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Overhead and Gantry Cranes Standard (29 CFR 1910.179).

OMB Control Number: 1218–0224.

Affected Public: Business or other for-profits.

Number of Respondents: 31,495.

Number of Responses: 642,566.

Frequency of Responses: On occasion; monthly; semi-annually.

Average Time per Response: Varies.

Estimated Total Burden Hours: 321,345.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648 or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2010–0023). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–26524 Filed 12–1–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Report of Changes That May Affect Your Black Lung Benefits, CM–929, CM–929P

AGENCY: Division of Coal Mine Workers' Compensation.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection requests (ICRs) titled, ''Report of Changes that May Affect Your Black Lung Benefits'' (Forms CM–929 and CM–929P). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by February 2, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR seeks approval under the PRA for an extension of an existing collection titled Report of Changes That May Affect Your Black Lung Benefits (Forms CM–929 and CM–929P). These forms help determine continuing eligibility of primary beneficiaries receiving black lung benefits. The primary beneficiary or their representative payee is required to verify and update certain information that may affect entitlement to benefits, including changes to income, marital status, receipt of state workers' compensation benefits, and their dependents' status. While the information collected remains the same as in the currently approved collection, the updated forms add an electronic filing option. The Black Lung Benefits Act, 30 U.S.C. 901 *et seq.,* and its implementing regulations, 20 CFR 725.513(a), 725.533(e), authorizes this information collection. See 30 U.S.C. 936(a).

This information collection is subject to the PRA. A Federal agency generally

cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0028.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Revision.

Title of Collection: Report of Changes that May Affect Your Black Lung Benefits.

Form: Report of Changes that May Affect Your Black Lung Benefits, CM–929, CM–929P.

OMB Control Number: 1240–0028.

Affected Public: Individuals or households; Business or other for profit; and Not-for- profit institutions.

Estimated Number of Respondents: 21,681.

Frequency: Annually.

Total Estimated Annual Responses: 21,681.

Estimated Average Time per Response: 5–80 minutes.

Estimated Total Annual Burden Hours: 6,373 hours.

Total Estimated Annual Other Cost Burden: $0.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: November 28, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–26508 Filed 12–1–23; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: IMLS Evaluation of Grant Programs Funded by the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of IMLS's evaluation of grant programs funded by the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

A copy of the proposed collection request can be obtained by contacting the individual listed below the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 31, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Lisa Hechtman, Ph.D, Social Science Research Analyst, Office of Research and Evaluation, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Hechtman can be reached by telephone at 202–653–4724 or by email at *lhechtman@IMLS.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy

development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the approval of the IMLS Evaluation of Grant Programs Funded by the ARPA and the CARES Act. In direct response to the COVID–19 pandemic, IMLS awarded roughly $250 million in ARPA and CARES Act funds to State Library Administrative Agencies, libraries, and museums. The proposed information collection covers the four largest funding programs, which account for about 99% of funding: Grants to State ARPA State Grants, Grants to State CARES Act State Grants, CARES Act Grants for Museums and Libraries, and American Rescue Plan for Museums and Libraries. Given their more targeted focus, the American Rescue Plan for Native American/Native Hawaiian Museum and Library Services CARES Act Grants for Museums and Libraries and CARES Act Grants for Native American/Native Hawaiian Museum and Library Services programs will be studied separately from this proposed information collection with special emphasis placed on using culturally responsive evaluation methods. The proposed evaluation of IMLS's ARPA and CARES Act grant programs will include a review of the relevant administrative processes and the distribution and use of the funds in order to improve the agency's understanding of the effectiveness of the program and the lessons learned, identify gaps and needs in continuing post-recovery, and improve or inform future design, technical support, and distribution of special use funds as part of an overall emergency response plan.

This study will include conducting 75 semi-structured interviews (73 individual interviews, 2 group interviews, totaling 75 interviews and 79 expected participants) coupled with a secondary data collection effort of reviewing library and museum administrative data, ARPA and CARES Act grant programs awardee reporting, and a literature review. The 60-day Notice was published in the **Federal Register** on July 28, 2023 (Vol. 88, No. 144). The agency received no comments under this notice.

Agency: Institute of Museum and Library Services.

Title: IMLS Evaluation of Grant Programs Funded by the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: IMLS applicants and awardees, including museum leadership and library leadership for institutions receiving discretionary CARES Act and ARPA grants, and State Library Administrative Agency (SLAA) leadership for SLAAs receiving CARES Act and ARPA formula grants.

Total Estimated Number of Annual Respondents: 79.

Frequency of Response: Once per request.

Average Minutes per Response: 90 minutes.

Total Estimated Number of Annual Burden Hours: 118.5.

Cost Burden (dollars): $3,881.

Total Annual Federal Costs: $27,889.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 28, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–26502 Filed 12–1–23; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Collections Assessment for Preservation Program

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this notice is to solicit comments concerning a plan to offer a national collections assessment program to provide small and midsize museums with technical support to evaluate the condition of their collections and the environmental conditions in which they are housed. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 31, 2024.

ADDRESSES: Send comments to Sandra Narva, Acting Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Narva can be reached by telephone: 202–653–4634, or by email at *snarva@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Sarah Glass, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Glass can be reached by telephone at 202–653–4668 or by email at *sglass@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

IMLS is the primary source of federal support for the Nation's libraries and

museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

To administer a special initiative of the National Leadership Grants for Museums program titled Collections Assessment for Preservation Program.

The goal of the special initiative is to provide an affordable and accessible program for small to midsize museums to help them plan for the conservation of the collections entrusted to them by the public for preservation. Through this program, IMLS wishes to increase the capacity of museums to (1) understand the conservation needs of their collections; (2) strengthen the knowledge of museum personnel about the care and conservation of collections; and (3) assist museums in planning strategically for the long-term care and conservation of their collections. The national collections assessment program is being offered as a special initiative with funding from the National Leadership Grants for Museums program.

Agency: Institute of Museum and Library Services.

Title: Collections Assessment for Preservation Program.

OMB Control Number: 3137–0103.

Agency Number: 3137.

Respondents/Affected Public: Museums, colleges and universities, and organizations or associations that engage in activities designed to advance the well-being of museums and the museum profession.

Total Estimated Number of Annual Respondents: TBD.

Average Minutes per Response: TBD.

Total Estimated Number of Annual Burden Hours: TBD.

Cost Burden (dollars): TBD.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 28, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–26501 Filed 12–1–23; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0048]

Information Collection: Licenses, Certifications, and Approvals for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

DATES: Submit comments by January 3, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0048 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0048.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2023–0048 on this website. The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23265A126 and ML23265A127.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 7, 2023, 88 FR 61626.

1. *The title of the information collection:* Licenses, Certifications, and Approvals for Nuclear Power Plants.

2. *OMB approval number:* 3150–0151.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion. Applications are submitted only when licensing action is sought.

6. *Who will be required or asked to respond:* Applicants for early site permits (ESPs), standard design approvals (SDAs) and certifications, manufacturing licenses (MLs), and combined licenses (COLs) for commercial nuclear power reactors.

7. *The estimated number of annual responses:* 59 (48 reporting responses plus 11 recordkeepers).

8. *The estimated number of annual respondents:* 13.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 307,465 (294,220 hours reporting + 13,245 hours recordkeeping).

10. *Abstract:* The licensing processes in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' provide for issuance of ESPs, SDAs, MLs, and COLs for commercial nuclear power reactors. The applicants submit updated reports, applications for renewals, exemption requests and maintain records of changes to the facility and records of detailed design related information. These licensing procedures are options to the two-step licensing process in 10 CFR part 50, which provides for a construction permit (CP) and an operating license (OL). The part 52 licensing process places procedural requirements in part 52 and technical requirements in part 50. Part 52 can reduce the overall paperwork burden borne by applicants for CPs and OLs because part 52 only requires a single application and provides options for referencing standardized designs. The information in 10 CFR part 52 is needed by the agency to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, plans and procedures for the protection of public health and safety. Regulatory Guide (RG) 1.206, ''Applications for Nuclear Power Plants'' (ADAMS Accession No. ML18131A181) provides guidance for applicants for COLs for nuclear power plants. Section C.2.1 of RG 1.206 deals with pre-application activities for respondents who intend to submit applications for COLs for nuclear power plants. Pre-application activities encompass all the communications, correspondence, meetings, document submittals/reviews, and other interactions that occur between the NRC staff and a prospective applicant before the tendering of an application under 10 CFR part 52. Participation in pre-application activities is voluntary. Potential applicants who engage in preapplication activities benefit from an early NRC staff assessment of the completeness and level of detail of the information that the applicant proposes to submit and staff identification of potential deficiencies in the application. Pre-application activities are expected to increase the efficiency of the staff's review of those applications once they are submitted. Subpart B of 10 CFR part 52 establishes the process for obtaining design certifications.

Dated: November 29, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–26523 Filed 12–1–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2024–72; Order No. 6817]

Competitive Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service document with the Commission concerning changes in rates and classifications of general applicability for competitive products. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 15, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On November 22, 2023, the Postal Service filed notice with the Commission concerning changes in rates and classifications of general applicability for Competitive products.[1] The Postal Service represents that, as required by 39 CFR 3035.102(b) and 39 CFR 3035.104(b), the Notice includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. Notice at 1. The proposed changes will take effect no earlier than July 1, 2024. *Id.*

Attached to the Notice is Governors' Decision No. 23–6, which states the new prices are in accordance with 39 U.S.C. 3632 and 3633 and 39 CFR 3035.102-.104.[2] The Governors' Decision provides an analysis of the Competitive products' price and classification changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3035. Governors' Decision No. 23–6 at 1. The Attachment to the Governors' Decision No. 23–6 sets forth the classification and price changes and includes draft Mail Classification Schedule (MCS) language for Competitive products of general applicability.

In addition, the Notice includes a non-public annex showing FY 2024 projected volumes, revenues, attributable costs, contribution, and cost

[1] USPS Notice of Changes in Rates and Classifications of General Applicability for Competitive Products, November 22, 2023 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates.

[2] Notice, Decision of the Governors of the United States Postal Service on Changes in Rates and Classifications of General Applicability for Competitive Products (Governors' Decision No. 23–6), at 1 (Governors' Decision No. 23–6).

coverage for each product. *See* Notice at 1. The Postal Service also filed supporting forecast data and price adjustment calculations for each affected product as required by Order No. 1062. *Id.* at 2.

The Notice also includes an application for non-public treatment of the unredacted version of the annex to the Governors' Decision, as well as the supporting materials for the data.[3] *Id.*

II. Summary of Changes

The Notice proposes establishing Zone 10 rates for Priority Mail Express, Priority Mail, and USPS Ground Advantage. *Id.* at 2. The rates will apply to packages that have Alaska, Hawaii, and U.S. Territories as their destination but not originating in the same state or territory. *Id.*

The classification changes will be made in the relevant price charts to include new columns for Zone 10 prices. *See* Governors' Decision No. 23–6 at 2–3. The changes are summarized below.

A. Price Changes

Prices are designed to be five percent higher than the Zone 8 prices proposed in Docket No. CP2024–52 that are intended to take effect January 2024.[4] *Id.* at 1. The Zone 9 prices for USPS Ground Advantage will be increased to align with the new Zone 10 prices. *Id.* The Zone 10 rates apply to (1) packages originating in the Lower 48 States and destinating in Alaska, Hawaii, or the U.S. Territories; (2) packages originating in Alaska and destined to Hawaii or the U.S. Territories; (3) packages originating in Hawaii or a territory in the Pacific Ocean and destined to Alaska, Puerto Rico, or the U.S. Virgin islands; and (4) packages originating in Puerto Rico or the U.S. Virgin Islands and destined to Alaska, Hawaii, or a territory in the Pacific Ocean. *Id.*

B. Classification Changes

References to Zone 10 will be added to the MCS Retail and Commercial Price Categories for Priority Mail Express, Priority Mail, and USPS Ground Advantage products. *Id.*

III. Initial Administrative Actions

The Commission establishes Docket No. CP2024–72 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E. Comments are due no later than December 15, 2023. For specific details of the planned price changes, interested persons are encouraged to review the Notice, which is available on the Commission's website at *www.prc.gov.*

Pursuant to 39 U.S.C. 505, Samuel J. Robinson is appointed to serve as Public Representative to represent the interests of the general public in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2024–72 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E.

2. Comments are due no later than December 15, 2023.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel J. Robinson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–26528 Filed 12–1–23; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See* United States Postal Service Notice of Errata to Application for Nonpublic Treatment Accompanying USPS Notice of Changes in Rates and Classifications of General Applicability for Competitive Products, November 17, 2023.

[4] *See* Docket No. CP2024–52, USPS Notice of Changes in Rates and Classifications of General Applicability for Competitive Products, November 15, 2023.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–74 and CP2024–76; MC2024–75 and CP2024–77; MC2024–76 and CP2024–78]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 5, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–74 and CP2024–76; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 24 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 5, 2023.

2. *Docket No(s).:* MC2024–75 and CP2024–77; *Filing Title:* USPS Request to Add USPS Ground Advantage Contract 6 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 5, 2023.

3. *Docket No(s).:* MC2024–76 and CP2024–78; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 25 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 5, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–26514 Filed 12–1–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–77 and CP2024–79; MC2024–78 and CP2024–80; MC2024–79 and CP2024–81; MC2024–80 and CP 2024–82; MC2024–81 and CP2024–83; MC2024–82 and CP2024–84]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 6, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–77 and CP2024–79; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 117 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 6, 2023.

2. *Docket No(s).:* MC2024–78 and CP2024–80; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 118 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 6, 2023.

3. *Docket No(s).:* MC2024–79 and CP2024–81; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 119 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 6, 2023.

4. *Docket No(s).:* MC2024–80 and CP2024–82; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 120 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 6, 2023.

5. *Docket No(s).:* MC2024–81 and CP2024–83; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 121 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 6, 2023.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

6. *Docket No(s).:* MC2024–82 and CP2024–84; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 122 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 6, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–26550 Filed 12–1–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, December 7, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: November 30, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–26671 Filed 11–30–23; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18061 and #18062; Hawaii Disaster Number HI–00073]

Presidential Declaration Amendment of a Major Disaster for the State of Hawaii

AGENCY: Small Business Administration.

ACTION: Correction to amendment 5.

SUMMARY: This is a correction to the amendment of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4724–DR), dated 08/10/2023.

Incident: Wildfires, including High Winds.

Incident Period: 08/08/2023 through 09/30/2023.

DATES: Issued on 11/27/2023.

Physical Loan Application Deadline Date: 12/11/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Hawaii, dated 08/10/2023, is hereby corrected to reflect the deadline for filing applications for physical damages as a result of this disaster to 12/11/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–26559 Filed 12–1–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12277]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Käthe Kollwitz'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Käthe Kollwitz'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–26535 Filed 12–1–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2340; Summary Notice No. 2023–47]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 26, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–2340 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–646, Federal Aviation Administration, phone 206–231–3187, email *deana.stedman@faa.gov.* This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 28, 2023.

Daniel J. Commins,

Manager, Integration and Performance.

Petition for Exemption

Docket No.: FAA–2023–2340.
Petitioner: The Boeing Company.
Section(s) of 14 CFR Affected: §§ 25.603(c), 25.609(a), 25.901(d), 25.1309(b) & (d), 25.1535, Appendix K25.1.1, and Appendix K25.1.2.
Description of Relief Sought: The petitioner has requested a partial exemption from the affected sections of 14 CFR as they relate to the engine nacelle inlet structure and engine anti-ice system on the Model 737–7 airplane. The petitioner has requested temporary relief, through May 31, 2026, in order to develop and certify the design changes necessary to address overheating during certain conditions that may result in failure of the engine inlet inner barrel and severe engine inlet cowl damage.

[FR Doc. 2023–26515 Filed 12–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0051]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 26, 2023. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0051 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Janelle Hinton, (202) 941–6744/*janelle.hinton@dot.gov;* Martha Kenley, (202) 604–6979/*martha.kenley@dot.gov,* Department of Transportation, Federal Highway Administration, Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Disadvantaged Business Enterprise Supportive Services (DBE/SS).

Background: The DBE/SS regulations (23 CFR 230.204(c)) require State DOT recipients to provide a detailed Statement of Work (SOW) outlining the proposed services and budget, approximated, based on the provided estimated funding allocation. State DOTs must submit a SOW that conforms to the purpose of the program, regulatory requirements, and federal cost principles to be eligible for funding. State DOTs send their proposed SOWs to the respective FHWA Division Office for review and approval, and the Division Offices sends the SOWs to HCR for concurrence and obtaining approvals necessary for allocating funds. While HCR has created guidance for State DOTs to follow in creating their SOWs, currently they are submitted in paper form and the contents and size of the submissions vary. Providing State DOTs with a SOW template available through the Civil Rights Connect System will streamline the SOW creation, submission, review, and approval process.

The DBE/SS regulations (23 CFR 230.204(h)) require State DOT recipients to provide reports to FHWA as a condition of receiving federal funding.

Although the regulations require reporting, there is no prescribed format for reporting this information to FHWA. Thus, FHWA receives varied reports that often lack the critical information necessary to evaluate whether the metrics identified in the State DOT's SOW have been met, and the number and demographic breakdown of DBEs that have participated in the program. Without this data provided in a manner that can easily be converted into national reports, FHWA is unable provide meaningful stewardship and oversight or to measure the effectiveness of DBE/SS Programs nationally. The national picture created by this report will enable HCR to indicate notable implementation efforts and improve its deployment of technical assistance to FHWA divisions offices. Also, standardized data will improve FHWA's ability to meaningfully respond to stakeholder inquiries, including Congress, regarding program accomplishments. Further, with standardized data of program results, FHWA can better support requests for additional funding.

The information required to populate the DBE/SS SOW template is based on existing requirements found in 23 CFR 230, subpart C; therefore, State DOTs should have the information to populate the SOW readily available. The information will merely be entered in an electronic fillable form as opposed to submitting a paper copy. The electronic system will also directly pre-populate the State's Annual Accomplishment Report with the metrices identified in the State's SOW. The information FHWA proposes to collect in its DBE/SS Accomplishment Report is based on existing reporting requirements found in 23 CFR 230, subpart B and the State DOT's individual detailed statement of work; therefore, State DOTs should have this information readily available. In addition, the fillable format will streamline the State's reporting process by eliminating the States' need to duplicate language from the SOW into the Annual Report.

While the requirements will not change, use of the SOW template and Accomplishment Report form will benefit State DOTs and FHWA by making the submissions more uniform in size and content, streamlining the submission and review process, and pair the performance metrics more easily with their accomplishments. By providing the SOW template along with this reporting format, FHWA aims to improve its stewardship and oversight of the DBE/SS Program, while ensuring State DOTs are effectively administering these discretionary grants for the benefit of DBEs.

Respondents: State Departments of Transportation Agencies responsible for submitting DBE/SS Statement of Work for the purpose of increasing the capacity and to improve the overall business practices of DBEs.

Frequency: DBE/SS SOW are submitted annually (upon funding availability); Accomplishment Reports are submitted every year by July 31st.

Estimated Average Burden per Response: The estimated number of hours for each of the 52 recipients to compile and submit the requested data is estimated to be no more than four employee hours annually.

Estimated Total Annual Burden Hours: The estimated total annual burden for 53 recipients is 212 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 28, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–26511 Filed 12–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0846]

Agency Information Collection Activity Under OMB Review: VA Financial Services Center (VA–FSC) Vendor File Request Form

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0846.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0846'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: VA Financial Services Center (VA–FSC) Vendor File Request Form (VA Form 10091).

OMB Control Number: 2900–0846.

Type of Review: Revision of a currently approved collection.

Abstract: The authorizing statute for this data collection falls under 31 U.S.C. 3701 and Public Law 104–134, Section 31001, Debt Collection Improvement Act of 1996. The mission of the Nationwide Vendor File Division of the Department of Veterans Affairs—Financial Services Center (VA–FSC) is to add, modify, or delete vendor records in the Financial Management Services (FMS) vendor file. The VA–FSC FMS vendor file controls aspects of when, where, and how vendors are paid. There are currently more than 2.4 million active vendor records in FMS.

The VA–FSC Vendor File Request Form, VA Form 10091, was previously created to streamline the data required to establish a vendor record from multiple sources into a single form. VA–FSC developed a web-based version of the 10091, in addition to the paper version, and will fully transition to use of the web-based form. VA now seeks a routine three-year renewal of the previous OMB PRA clearance. VA Form 10091 will be used throughout the VA to gather essential payment data from vendors (commercial, individuals, Veterans, employees, etc.) to establish or update vendor records in order to process electronic payments through the

ACH network to the vendor's financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 184 on September 25, 2023, pages 65775 and 65776.

Affected Public: Individuals or Households.

Estimated Annual Burden: 37,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 150,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26525 Filed 12–1–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0655]

Agency Information Collection Activity Under OMB Review: Residency Verification Report—Veterans and Survivors

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0655.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0655'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 107.

Title: Residency Verification Report-Veterans and Survivors (FL21–914).

OMB Control Number: 2900–0655.

Type of Review: Revision of a currently approved collection.

Abstract: Form Letter 21–914 is primarily used to gather information which is necessary to verify whether a veteran or beneficiary who is receiving benefits at the full-dollar rate based on U.S. residency continues to meet the residency requirements. Continued eligibility to benefits at the full-dollar rate cannot be determined without complete information about a veteran's or beneficiary's residency.

No substantive changes have been made to this form. However, the burden estimate has decreased due to (1) a decrease in the number of minutes it takes to fill out the form, and (2) the respondent total has also decreased since the previous approval due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 67454 on Friday, September 29, 2023.

Affected Public: Individuals or households.

Estimated Annual Burden: 75 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 900.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26548 Filed 12–1–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0786]

Agency Information Collection Activity: Department of Veterans (VA) Vocational Rehabilitation and Employment (VR&E) Longitudinal Study Survey Questionnaire; Withdrawn

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; withdrawal.

SUMMARY: On Tuesday, November 28, 2023, the Veterans Benefits Administration (VA), published a notice in the **Federal Register** announcing an opportunity for public comment on the proposed collection ''Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) Longitudinal Study Survey Questionnaire''. This notice was published in error; therefore, this document corrects that error by withdrawing this FR notice, document number 2023–26141.

DATES: As of November 28, 2023, the FR notice published at 88 FR 227 on Tuesday, November 28, 2023, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.*

SUPPLEMENTARY INFORMATION: FR Doc. 2023–26141, published on Tuesday, November 28, 2023, is withdrawn by this notice.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26506 Filed 12–1–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 231 December 4, 2023

Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Water-Source Heat Pumps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0029]

RIN 1904–AE05

Energy Conservation Program: Test Procedure for Water-Source Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is amending its test procedure for water-source heat pumps to expand the scope of applicability of the test procedure, incorporate by reference a new industry consensus test standard for water-source heat pumps, adopt a seasonal cooling efficiency metric, and specify more representative test conditions used for measuring heating performance. DOE has determined that the amended test procedure will produce results that are more representative of an average use cycle and be more consistent with current industry practice without being unduly burdensome to conduct. Additionally, DOE is adopting provisions governing public representations of efficiency for this equipment.

DATES: The effective date of this rule is January 3, 2024. The amendments will be mandatory for product testing starting November 29, 2024.

The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register on January 3, 2024.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-TP-0029.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Troy Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 449–9387. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: *Kristin.Koernig@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following material into 10 CFR parts 429 and 431:

AHRI Standard 600–2023 (I–P), *2023 Standard for Performance Rating of Water/Brine to Air Heat Pump Equipment,* approved September 11, 2023 (''AHRI 600–2023'').

ANSI/ASHRAE Standard 37–2009, *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE-approved June 24, 2009 (''ANSI/ASHRAE 37–2009'').

Errata sheet for ANSI/ASHRAE Standard 37–2009, *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* March 27, 2019.

ISO Standard 13256–1:1998, *Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps,* approved 1998 (''ISO 13256–1:1998'').

Properties of Secondary Working Fluids for Indirect Systems, including Section 2.3 Errata Sheet, Melinder, published 2010 (''Melinder 2010'').

Copies of AHRI 600–2023 are available from the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI''), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or by going to *www.ahrinet.org.*

Copies of ANSI/ASHRAE 37–2009 and Errata sheet for ANSI/ASHRAE Standard 37–2009 are available from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE''), 180 Technology Parkway NW, Peachtree Corners, GA 30092, (404) 636–8400, or by going to *www.ashrae.org.* (ASHRAE standards are co-published with American National Standards Institute (''ANSI'')).

Copies of ISO Standard 13256–1:1998 can be obtained from the International Organization for Standardization (''ISO''), Chemin de Blandonnet 8 CP 401, 1214 Vernier, Geneva, Switzerland, +41 22 749 01 11, or online at: *www.iso.org/store.html.*

Copies of Melinder 2010 are available from the International Institute of Refrigeration (''IIR''), 177 Boulevard Malesherbes 75017 Paris, France; +33 (0)1 42 27 32 35; *www.iifiir.org.*

See section IV.N of this document for further discussion of these standards.

Table of Contents

I. Authority and Background

Water-source heat pumps (''WSHPs'') are a category of small, large, and very large commercial package air-conditioning and heating equipment,[1] which are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D); 6313(a)(1)(G)–(I)) DOE's test procedure for WSHPs is currently prescribed at title 10 of the Code of Federal Regulations (''CFR'') part 431.96. The following sections discuss DOE's authority to establish and amend a test procedure for WSHPs and relevant background information regarding DOE's consideration of a test procedure for this equipment.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C of EPCA,[3] added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes WSHPs, the subject of this document. (42 U.S.C. 6311(1)(B)–(D))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by the Secretary) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including WSHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE undertook this rulemaking in satisfaction of the 7-year-lookback obligations under EPCA. (42 U.S.C. 6314(a)(1)). As discussed previously in this document, WSHPs are a category of commercial package air conditioning and heating equipment. EPCA requires the DOE test procedures for commercial package air conditioning and heating

[1] The Energy Policy and Conservation Act, as amended (''EPCA'') defines ''commercial package air conditioning and heating equipment'' as air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground-water-source) electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A)) EPCA further defines ''small commercial package air conditioning and heating equipment'' as commercial package air conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity); ''large commercial package air conditioning and heating equipment'' as commercial package air conditioning and heating equipment that is rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity); and ''very large commercial package air conditioning and heating equipment'' as commercial package air conditioning and heating equipment that is rated at or above 240,000 Btu per hour and below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B)–(D))

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

equipment to be the generally accepted industry testing procedure developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE 90.1. (42 U.S.C. 6314(a)(4)(A)) EPCA further requires that each time the referenced industry test procedure is amended in ASHRAE 90.1, DOE must amend its test procedure to be consistent with the industry update, unless DOE determines in a rulemaking that there is clear and convincing evidence that the updated update industry test procedure would not be representative of an average use cycle or would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)(C)) However, under the 7-year-lookback obligations, there is no ''clear and convincing evidence'' required in EPCA. Rather, EPCA only requires that DOE determine whether the amended test procedure would more accurately or fully comply with the requirements for the test procedure to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

DOE is publishing this final rule in satisfaction of its statutory obligations under EPCA. (42 U.S.C. 6314(a)(1)(A))

B. Background

DOE's existing test procedure for WSHPs is specified at 10 CFR 431.96 (''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps''). The Federal test procedure currently incorporates by reference International Organization for Standardization (''ISO'') Standard 13256–1 (1998), ''Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps,'' (''ISO 13256–1:1998'').

DOE initially incorporated ISO 13256–1:1998 as the referenced test procedure for WSHPs on October 21, 2004 (69 FR 61962), and DOE last reviewed the test procedure for WSHPs as part of a final rule for commercial package air conditioners and heat pumps published in the **Federal Register** on May 16, 2012 (''May 2012 Final Rule''; 77 FR 28928). In the May 2012 Final Rule, DOE retained the reference to ISO 13256–1:1998 but adopted additional provisions for equipment setup at 10 CFR 431.96(e), which provide specifications for addressing key information typically found in the installation and operation manuals. 77 FR 28928, 28991.

On June 22, 2018, DOE published a request for information (''RFI'') to collect information and data to consider amendments to DOE's test procedure for WSHPs (''June 2018 RFI''). 83 FR 29048.[4] Subsequently, on August 30, 2022, DOE published a notice of proposed rulemaking (''NOPR'') in which DOE responded to stakeholders' comments on the June 2018 RFI and proposed amendments to its test procedure for WSHPs (''August 2022 NOPR'') 87 FR 53302. In the August 2022 NOPR, DOE proposed to amend the test procedures for WSHPs to incorporate by reference AHRI Standard 340/360–2022 (I–P), ''2022 Standard for Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'' (''AHRI 340/360–2022'') and ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ANSI/ASHRAE 37–2009''). *Id.* at 87 FR 53348. Specifically, DOE proposed to implement these changes by adding new appendices C and C1 to subpart F of part 431, both titled ''Uniform Test Method for Measuring the Energy Consumption of Water-Source Heat Pumps.'' (''appendix C'' and ''appendix C1,'' respectively). *Id.* at 87 FR 53351–52252. The current DOE test procedure for WSHPs would be relocated to appendix C without change, and the new test procedure adopting AHRI 340/360–2022 and ANSI/ASHRAE 37–2009 and any other amendments would be set forth in proposed appendix C1 for determining IEER. *Id.* at 87 FR 53352–53353. DOE held a public meeting on September 14, 2022 (''NOPR public meeting'') to present the key proposals from the August 2022 NOPR.

DOE received comments in response to the August 2022 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE AUGUST 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Air-Conditioning, Heating and Refrigeration Institute	AHRI	24	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy.	Joint Commenters	27	Efficiency Organizations.
Northwest Energy Efficiency Alliance	NEEA	25	Efficiency Organization.
New York State Energy Research and Development Authority.	NYSERDA	21	State Agency.
ClimateMaster, Inc	ClimateMaster	22	Manufacturer.
WaterFurnace International	WaterFurnace	20	Manufacturer.
Enertech Global, LLC	Enertech	19	Manufacturer.
Florida Heat Pump Manufacturing	FHP	26	Manufacturer.
The Geothermal Exchange Organization	GeoExchange	29	Trade Association.
Madison Indoor Air Quality	MIAQ	23	Manufacturer.
Trane Technologies	Trane	28	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5] In addition to the comments listed in Table I.1, DOE also received 2 comments from anonymous individuals, which were considered in the development of this final rule, but not cited individually. To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR public meeting, DOE cites the written comments throughout this final rule.

[4] An extension of the comment period for the June 2018 RFI was published July 9, 2018. 83 FR 31704.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop an amended test procedure for WSHPs. (Docket No. EERE–2017–BT–TP–0029, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

In May 2021, ISO published an updated version of Standard 13256–1, ISO Standard 13256–1 (2021), ''Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps,'' (''ISO 13256–1:2021''). In January 2023, ASHRAE published ASHRAE 90.1–2022. ASHRAE 90.1–2022 did not update the referenced test procedure for WSHPs.[6]

On September 11, 2023, AHRI published a new industry test standard for WSHPs, titled AHRI Standard 600, ''Standard for Performance Rating of Water/Brine to Air Heat Pump Equipment'' (''AHRI 600–2023''). DOE worked with stakeholders (including WSHP manufacturers and efficiency advocates) as part of the AHRI Geothermal and WSHP standards technical committee (''STC'') to develop AHRI 600–2023, which addresses many of the issues in the current WSHP test procedure that DOE raised in the August 2022 NOPR. The intent of the Geothermal and WSHP STC was for AHRI 600–2023 to be used for testing WSHPs instead of any versions of ISO Standards 13256–1.

II. Synopsis of the Final Rule

In this final rule DOE is establishing new appendices C and C1 to subpart F of part 431. The current DOE test procedure for WSHPs is relocated to appendix C without change. The amended test procedure for WSHPs is established in a new appendix C1, which includes the following amended test procedure requirements for WSHPs for measuring the updated efficiency metrics: (1) integrated energy efficiency ratio (''IEER'') for WSHPs using AHRI 600–2023; and (2) applied coefficient of performance (''ACOP'') using AHRI 600–2023. Use of the amended test procedure in appendix C1 will not be required until such time as compliance is required with amended energy conservation standards for WSHPs denominated in terms of IEER, should DOE adopt such standards.

Additionally, DOE is expanding the scope of the test procedure to include WSHPs with capacities between 135,000 and 760,000 British thermal units per hour (''Btu/h''), as well as specifying the components that must be present for testing and amending certain provisions related to representations and enforcement in 10 CFR part 429.

As discussed in this final rule, DOE has concluded that the amended test procedure in appendix C1 (incorporating by reference the most recent industry consensus test standard for WSHPs, AHRI 600–2023) provides more representative results and more fully complies with the requirements of 42 U.S.C. 6314(a)(2) than testing with the current Federal test procedure (based on ISO 13256–1:1998).

The adopted amendments are summarized in Table II.1 and compared to the test procedure provisions in place prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

Current DOE test procedure	Amended test procedure	Attribution
Located in 10 CFR 431.96	Current test procedure moved to appendix C to 10 CFR 431.96 and amended test procedure established in appendix C1 to 10 CFR 431.96.	Readability of test procedure.
Scope is limited to units with a cooling capacity less than 135,000 Btu/h.	Expands the scope of the test procedure to additionally include units with a cooling capacity greater than or equal to 135,000 Btu/h and less than 760,000 Btu/h in 10 CFR 431.96.	Harmonize with scope of test procedure for water-cooled commercial unitary air conditioners.
Incorporates by reference ISO 13256–1:1998	Incorporates by reference AHRI 600–2023 into appendix C1.	Improve representativeness of test procedure.
Includes provisions for determining EER metric	Includes provisions for determining IEER by incorporating by reference AHRI 600–2023 into appendix C1.	Improve representativeness of test procedure.
Specifies test condition of 68 °F for measuring coefficient of performance (''COP'').	Changes the test condition for ACOP to 50 °F, by incorporating by reference AHRI 600–2023 into appendix C1.	Improve representativeness of test procedure.
Does not include WSHP-specific provisions for determination of represented values in 10 CFR 429.43.	Includes provisions in 10 CFR 429.43 specific to WSHPs for determining represented values.	Establish WSHP-specific provisions for determination of represented values.
Does not include WSHP-specific enforcement provisions in 10 CFR 429.134.	Adopts product-specific enforcement provisions for WSHPs regarding verification of cooling capacity, testing of systems with specific components, and IEER testing conducted by DOE.	Establish enforcement provisions for DOE testing of WSHPs.

DOE has determined that the test procedure in appendix C, as described in section III of this final rule regarding the establishment of appendix C, does not alter the measured efficiency of WSHPs or require retesting solely as a result of the establishment of appendix C. Additionally, DOE has determined that the establishment of appendix C will not increase the cost of testing.

DOE has determined that the amended test procedure adopted in appendix C1 does alter the measured efficiency of WSHPs and would increase the cost of testing relative to the current Federal test procedure, as discussed further in section III.I of this document. However, as stated, use of appendix C1 will not be required until the compliance date of any amended standards denominated in terms of IEER, should DOE adopt such standards. DOE has also determined that the amended test procedure will not be unduly burdensome to conduct.

For units with cooling capacity greater than or equal to 135,000 Btu/h and less than 760,000 Btu/h newly added within scope of the WSHP test procedure, testing according to the established test procedure for purposes of certifications of compliance will not

[6] ASHRAE 90.1–2022 lists ANSI/AHRI/ASHRAE 13256–1: 1998 (2021) as the test procedure for WSHPs. However, DOE believes ASHRAE intended to include ''2012'' in the parentheses as that was the most recent year in which the 1998 version of 13256–1 was redesignated.

be required until the compliance date of any energy conservation standards for such equipment, should DOE adopt such standards. However, if a manufacturer chooses to make representations of the energy efficiency or energy use of such equipment, beginning 360 days after publication of the final rule in the **Federal Register**, the manufacturer will be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d)(1))

The effective date for the amended test procedure adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Discussion of DOE's actions are addressed in detail in section III of this document.

III. Discussion

A. Scope of Applicability

This rulemaking applies to WSHPs, which are a category of small, large, and very large commercial package air-conditioning and heating equipment. (*See* 42 U.S.C. 6311(1)(B)–(D)) In its regulations, DOE defines WSHP as ''a single-phase or three-phase reverse-cycle heat pump that uses a circulating water loop as the heat source for heating and as the heat sink for cooling. The main components are a compressor, refrigerant-to-water heat exchanger, refrigerant-to-air heat exchanger, refrigerant expansion devices, refrigerant reversing valve, and indoor fan. Such equipment includes, but is not limited to, water-to-air water-loop heat pumps.'' 10 CFR 431.92.

1. WSHPs With a Cooling Capacity Greater Than or Equal to 135,000 Btu/h

The current Federal WSHP test procedure and energy conservation standards apply to WSHPs with a rated cooling capacity below 135,000 Btu/h. 10 CFR 431.96, Table 1 and 10 CFR 431.97, Table 3. In the August 2022 NOPR, DOE proposed to expand the scope of applicability of the test procedure to include WSHPs with a cooling capacity between 135,000 and 760,000 Btu/h. 87 FR 53302, 53307. Specifically, DOE proposed to update Table 1 to 10 CFR 431.96 to include WSHPs with a cooling capacity greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h under Large Commercial Package Air-Conditioning and Heating Equipment; and to include WSHPs with a cooling capacity greater than or equal to 240,000 Btu/h and less than 760,000 Btu/h under Very Large Commercial Package Air-Conditioning and Heating Equipment. *Id.* In the August 2022 NOPR, DOE tentatively determined that, based on the presence on the market of units over 135,000 Btu/h with efficiency ratings and the identification of laboratories capable of testing such units, such testing would not be unduly burdensome. *Id.* at 87 FR 53306. Additionally, DOE stated that expanding the scope of DOE's test procedure for WSHPs to include equipment with a cooling capacity between 135,000 Btu/h and 760,000 Btu/h would ensure that representations for all WSHPs are made using the same test procedure and that ratings for equipment in this cooling capacity range are appropriately representative. *Id.* at 87 FR 53306–53307. DOE requested comments on the proposed expansion of the scope of applicability of the Federal test procedure to include WSHPs with a cooling capacity between 135,000 and 760,000 Btu/h. *Id.* at 87 FR 53307.

In response to the June 2022 NOPR, some commenters expressed concern with the proposal to expand the scope of the test procedure. AHRI commented that it is concerned with DOE's proposal to expand testing coverage and update test procedures without taking steps to measure the impact on manufacturers and third-party test labs. (AHRI, No. 24 at pp. 2–3) AHRI asserted that the August 2022 NOPR does not show evidence of DOE's participation in the critical consensus process required for developing test procedures and improving efficiency for ASHRAE 90.1, which involves conversations regarding lab capabilities, product availability, and product efficiencies. (*Id.*)

AHRI further commented that the impact on manufacturers of DOE's proposed test coverage expansion has not been quantified. (*Id.* at p. 3) AHRI stated that it expects third-party test labs will not be able to accommodate the expanded scope to include equipment up to 760,000 Btu/h, as such an expansion of scope would require test labs to increase their testing capacity from 3 gallons per minute (''GPM'') per ton (''GPM/ton'') at 50 °F to nearly 200 GPM. (*Id.*) AHRI commented that the additional constraints placed on test labs would cause delays in testing other equipment as well as WSHPs. (*Id.*)

Similarly, ClimateMaster opposed DOE's proposal to include WSHP equipment with capacities greater than 135,000 Btu/h within the scope of the test procedure due to the cost burden that ClimateMaster asserted would be imposed on manufacturers and consumers. (ClimateMaster, No. 22 at p. 2) ClimateMaster stated that these larger model sizes account for only 0.4 percent of its overall market volume from 2019 to 2021. (*Id.*) ClimateMaster presented data showing that adding the higher-capacity models to the scope of the test procedure would increase the certification cost by $184,000 per year to accommodate testing and equipment costs. (*Id.*) ClimateMaster further commented that third-party compliance labs are unable to test equipment above 420,000 Btu/h, which would render DOE's proposal to test WSHPs that reach 760,000 Btu/h impossible. (*Id.*) ClimateMaster noted that the increased cost burden needed to accommodate such a small percentage of affected equipment would negatively affect consumers as well as manufacturers. (*Id.*) ClimateMaster recommended that DOE maintain the scope of applicability of the Federal test procedure to only include WSHPs with cooling capacity below 135,000 Btu/h. (*Id.* at p. 3)

FHP commented that its main concern regarding DOE's proposal to expand the scope of applicability is lab availability. (FHP, No. 26 at p. 2) FHP stated that it has found only a limited supply of WSHP testing facilities, none of which have a capacity to test equipment over 480,000 Btu/h. (*Id.*) FHP recommended that DOE provide a list of testing facilities for WSHPs with a cooling capacity greater than 135,000 Btu/h, stating that multiple testing facilities must be available to ensure that an increased demand for large unit testing does not also cause spikes in testing costs due to supply and demand pressures. (*Id.*) FHP further commented that WSHPs with capacities above 135,000 Btu/h account for less than 1 percent of the market share. (*Id.*)

MIAQ commented that it is concerned DOE has not quantified the impact on manufacturers and third-party labs of expanding the scope of coverage to larger equipment. (MIAQ, No. 23 at p. 3) MIAQ stated that conversations regarding lab capabilities and product availability and efficiency occur during the consensus process required for developing test procedures in ASHRAE 90.1. (*Id.*) MIAQ stated that the water volume required for testing larger capacities up to 760,000 Btu/h may limit testing. (*Id.*) More specifically, MIAQ stated that testing a 760,000 Btu/h WSHP would require approximately 200 GPM of 50 °F water, which MIAQ stated would require large chillers to maintain the water at the correct temperature. (*Id.*) MIAQ also noted that due to the increased need for larger spaces capable of testing such equipment, there could be bottlenecks at third-party test labs, which also test other categories of commercial package air conditioning and heating equipment. (*Id.*)

WaterFurnace stated that there are no known WSHP products with a cooling capacity above approximately 360,000 Btu/h nor any test facilities capable of testing such WSHPs at the required conditions for IEER. (WaterFurnace, No. 20 at p. 6) WaterFurnace commented that DOE did not justify regulating this larger equipment and that doing so would be a burden on the industry and testing facilities. (*Id.*)

Other commenters supported the proposal to expand the scope of the WSHP test procedure. The Joint Commenters, NEEA, and NYSERDA supported DOE's proposal to include WSHPs with cooling capacities between 135,000 and 760,000 Btu/h in the scope of the test procedure. (Joint Commenters, No. 27 at p. 1; NEEA, No. 25 at p. 2; NYSERDA, No. 21 at p. 2) The Joint Commenters stated that they believe it is important that equipment in this capacity range be testing using a standardized test procedure and that expanding the scope of the test procedure would bring it into alignment with test procedures for other commercial package air-conditioning and heating equipment. (Joint Commenters, No. 27 at p. 1)

NEEA commented that, while this size range may account for relatively few annual sales, expanding the test procedure to larger capacity equipment would ensure that large equipment is fairly rated and regulated and held to the same standards as smaller equipment of the same type. (NEEA, No. 25 at p. 2)

NYSERDA asserted that expanding the scope is a feasible and necessary change to ensure that WSHPs of varying sizes are consistently tested according to industry standards, which will demonstrate to customers that WSHPs—especially geothermal WSHPs—are reliable and thus enable WSHP market growth. (NYSERDA, No. 21 at p. 2)

As discussed in the August 2022 NOPR, DOE has identified numerous model lines of WSHPs with a cooling capacity over 135,000 Btu/h from a wide variety of manufacturers. 87 FR 53302, 53306. The manufacturer literature for all identified model lines includes efficiency representations that are explicitly based on ISO 13256–1:1998, the current industry standard, indicating efficiency representations can be made for these models using an industry consensus test procedure for WSHPs. *Id.*

In response to comments from AHRI, Climate Master, and WaterFurnace, as discussed in the August 2022 NOPR, DOE is aware of several independent test labs that have the capability to test WSHPs with a cooling capacity over 135,000 Btu/h. *Id.* DOE conducted investigative testing on multiple WSHP models with a cooling capacity over 135,000 Btu/h at one such independent test lab and did not encounter any difficulties specific to units in this capacity range. *Id.* Regarding comments by ClimateMaster and FHP stating that test labs cannot test units greater than 420,000 Btu/h and 480,000 Btu/h, respectively, comments submitted by WaterFurnace indicate that the largest models currently available on the market are 360,000 Btu/h, which DOE research corroborates. As such, any capacity limitations for testing as asserted by ClimateMaster and FHP would not impact any models currently on the market.

Further, DOE notes that AHRI 600–2023 includes provisions for testing units with capacities over 135,000 Btu/h. Both ASHRAE 90.1 and DOE regulations cover other categories of commercial air conditioning and heating equipment, including water-cooled commercial unitary air conditioners (''WCUACs''), with a cooling capacity up to 760,000 Btu/h. As discussed in the August 2022 NOPR, DOE has determined that testing WSHPs with a cooling capacity over 135,000 Btu/h would be of comparable burden to testing other commercial air conditioning and heating equipment of similar capacity, such as WCUACs. *Id.*

Regarding comments on the potential burden of testing such units, EPCA does not require DOE to consider only burden-reducing options, but rather requires only that the test procedure must not be unduly burdensome to conduct. Expanding the scope of the test procedure to include larger equipment would not necessitate certification unless DOE were to establish standards for such equipment. Until such a time, an expansion of scope for the test procedure would require only that if manufacturers choose to make optional representations of efficiency for WSHPs with a cooling capacity over 135,000 Btu/h, that such optional representations be made in accordance with the DOE test procedure. Further, DOE notes that representations for WSHPs can be made either based on testing (in accordance with 10 CFR 429.43(a)(1)) or based on alternative efficiency determination methods (''AEDMs'') (in accordance with 10 CFR 429.43(a)(2)). An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing. Whereas DOE requires at least two units to be tested per basic model when represented values are determined through testing, DOE requires each AEDM to be validated by tests of only two WSHP basic models of any capacity (in accordance with 10 CFR 429.70(c)(2)). Based on DOE's observation of the prevalence of use of AEDMs for WSHP and similar equipment for which energy conservation standards currently apply (*i.e.,* for equipment with a cooling capacity no greater than 135,000 Btu/h), DOE expects that representations of efficiency could be determined through the use of AEDMs for the majority of models with a cooling capacity over 135,000 Btu/h. As such, DOE expects an expansion of scope for the DOE test procedure to include equipment with a cooling capacity over 135,000 Btu/h would not necessitate the testing of many such larger units. Therefore, testing would not be as burdensome as noted by commenters.

Based on the presence on the market of units over 135,000 Btu/h, the identification of laboratories capable of testing such units, DOE's observation that representations of efficiency for such equipment are currently being made, and the inclusion of units over 135,000 Btu/h within the scope of the most recent industry consensus test standard for WSHPs (AHRI 600–2023), DOE has determined that testing units with a cooling capacity over 135,000 Btu/h is feasible and would not be unduly burdensome. As discussed, expanding the scope of DOE's test procedure for WSHPs to include equipment with a cooling capacity between 135,000 Btu/h and 760,000 Btu/h would ensure that representations for all WSHPs are made using the same test procedure and that ratings for equipment in this cooling capacity range are appropriately representative.

For the reasons discussed in the proceeding paragraphs and in the August 2022 NOPR, DOE is expanding the scope of applicability of the WSHP test procedure to include WSHPs with a cooling capacity between 135,000 and 760,000 Btu/h consistent with the scope of AHRI 600–2023. Specifically, DOE is updating Table 1 to 10 CFR 431.96 to include WSHPs with a cooling capacity greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h under Large Commercial Package Air-Conditioning and Heating Equipment and to include WSHPs with a cooling capacity greater than or equal to 240,000 Btu/h and less than 760,000 Btu/h under Very Large

Commercial Package Air-Conditioning and Heating Equipment.

As previously discussed, DOE does not currently specify energy conservation standards for WSHPs with a cooling capacity over 135,000 Btu/h. DOE would consider any future standards applicable to WSHPs over 135,000 Btu/h in a separate energy conservation standards rulemaking. Manufacturers of WSHPs with a cooling capacity over 135,000 Btu/h would not be required to test WSHPs with a cooling capacity over 135,000 Btu/h until such time as compliance with standards for this equipment were required, should DOE adopt such standards. DOE notes, however, that beginning 360 days after this final rule publishes in the **Federal Register**, any voluntary representations with respect to energy use or efficiency must be based on the test procedure in appendix C, and any voluntary representations of IEER or ACOP must be based on the test procedure in appendix C1.

2. Representations for Residential Applications

Sections 6.5 and 6.6 of AHRI 600–2023 state that provisions for determination of residential cooling capacity and efficiency are to be added in a future revision. In the August 2022 NOPR, DOE proposed to allow optional energy efficiency ratio (''EER'') and COP representations at the full-load and part-load EWT conditions specified in Table 1 of ISO 13256–1:1998 per the DOE test procedure proposed in appendix C1. 87 FR 53302, 53313. DOE notes that the residential representations discussed in AHRI 600–2023 are separate from the proposed optional representations from the August 2022 NOPR, as test provisions in AHRI 600–2023 specify separate air and liquid external static pressures to be used during testing to develop ratings for residential applications. However, the residential representations have not yet been fully developed for WSHPs, as indicated in sections 6.5 and 6.6 of AHRI 600–2023. Therefore, DOE is not adding any provisions regarding residential representations in this final rule but will continue to work with the AHRI 600 committee to develop such provisions.

B. Definition

As discussed, WSHPs are a category of commercial package air-conditioning and heating equipment. The current definition for ''water-source heat pump'' does not explicitly state that it is ''commercial package air-conditioning and heating equipment.'' This is inconsistent with the definitions of most other categories of commercial package air-conditioning and heating equipment (*e.g.,* computer room air conditioner, single package vertical air conditioner, variable refrigerant flow multi-split air conditioner). *See* 10 CFR 431.92.

To provide consistency with other definitions of specific categories of commercial package air-conditioning and heating equipment, DOE proposed in the August 2022 NOPR to amend the definition of ''water-source heat pump'' to explicitly indicate that WSHPs are a category of commercial package air-conditioning and heating equipment. 87 FR 53302, 53307. This proposed clarification to the ''water-source heat pump'' definition would not change the scope of equipment covered by the definition.

In addition, the current definition for WSHPs lists the main components of a WSHP and it includes ''indoor fan'' on that list. *See* 10 CFR 431.92. DOE discussed in the August 2022 NOPR that it has identified coil-only WSHPs on the market that rely on a separately installed furnace or modular blower for indoor air movement. 87 FR 53302, 53307. To clarify that coil-only WSHPs are covered under the WSHP definition, DOE proposed to amend the WSHP definition to make clear that an indoor fan is not an included component for coil-only WSHPs. *Id.* Specifically, DOE proposed to include the parenthesized statement ''except that coil-only units do not include an indoor fan'' in the sentence listing the main components in the proposed WSHP definition. *Id.*

DOE requested comment on the proposed change to the definition of WSHP to explicitly indicate that WSHP is a category of commercial package air-conditioning and heating equipment and to clarify that the presence of an indoor fan does not apply to coil-only units. *Id.*

ClimateMaster generally agreed with DOE's proposed definition of WSHP, but requested clarity on what constitutes a commercial system. (ClimateMaster, No. 22 at p. 3) ClimateMaster commented that other industry test programs clearly demarcate the difference between systems through listed capacity. (*Id.*) ClimateMaster noted that the current definition includes only packaged systems but that DOE's proposed amendments in the August 2022 NOPR specified procedures for testing split systems. (*Id.*) ClimateMaster stated that it is not able to determine with the current definition what exact products would fall under the certification program and how DOE would enforce which products are covered by the applicable standards. (*Id.*) ClimateMaster also stated that there were non-reversible WSHP products that operate as either cooling only units or utilize a hydronic coil that are not covered by the current definition. ClimateMaster stated that provisions should be made for this equipment type. (*Id.*)

WaterFurnace questioned whether it would be necessary to change the definition of WSHP if DOE were to maintain the method of test based on ISO 13256 and AHRI 600. (WaterFurnace, No. 20 at p. 6) WaterFurnace recommended using the term ''heat pump'' in lieu of ''air conditioner and heating equipment,'' which WaterFurnace asserted is technically inaccurate. (*Id.*)

Regarding ClimateMaster's request for clarity regarding the definition, DOE notes that all products that meet the WSHP definition, with sizes less than 760,000 Btu/h cooling capacity (see discussion in section III.A of this final rule), would be considered a WSHP, regardless of whether the models are marketed and distributed in commerce for commercial or residential applications. The definition of WSHPs includes both single-package and split-system equipment.

Regarding WaterFurnace's comment on whether it would be necessary to change the definition of WSHP if DOE were to maintain the method of test based on ISO 13256 and AHRI 600, the DOE definition of WSHP serves to specify models that are within the scope of coverage of DOE's regulations and is independent of the test procedure being used for WSHPs. DOE also notes in response to WaterFurnace's comment that the definition of WSHP already uses the term ''heat pump'' to define WSHP and that the term ''commercial package air-conditioning and heating equipment'' is being added to the definition only to indicate the larger type of equipment, as defined in the EPCA, of which WSHPs are a category.

Regarding ClimateMaster's comment that the current definition does not cover units that are not reversible, DOE considers water-source heat pumps to include only models with reverse-cycle heating; therefore, DOE is not removing the ''reverse-cycle'' provision from the WSHP definition.

For the reasons discussed, DOE is adopting an amended definition of WSHP that is identical to the definition proposed in the August 2022 NOPR, as follows:

Water-source heat pump means commercial package air-conditioning and heating equipment that is a single-phase or three-phase reverse-cycle heat pump that uses a circulating water loop as the heat source for heating and as the

heat sink for cooling. The main components are a compressor, refrigerant-to-water heat exchanger, refrigerant-to-air heat exchanger, refrigerant expansion devices, refrigerant reversing valve, and indoor fan (except that coil-only units do not include an indoor fan). Such equipment includes, but is not limited to, water-to-air water-loop heat pumps.

C. Organization of the Amended DOE Test Procedures

In this final rule, DOE is relocating and centralizing the current test procedure for WSHPs to a new appendix C to subpart F of part 431 and establishing an amended test procedure for WSHPs in a new appendix C1 to subpart F of part 431. Appendix C maintains the substance of the current test procedure and continues to reference ISO 13256–1:1998 and provide for determining EER and COP. Appendix C also includes the additional test provisions for equipment set-up currently codified at 10 CFR 431.96(e). As discussed, WSHPs are required to be tested according to appendix C until such time as compliance is required with an amended energy conservation standard based on the amended test procedure in appendix C1, should DOE adopt such a standard.

DOE is also establishing an amended test procedure for WSHPs in a new appendix C1 to subpart F of part 431 that includes provisions for determining IEER and ACOP by incorporating by reference AHRI 600–2023, as discussed further throughout this document. WSHPs are not required to be tested according to appendix C1 until such time as compliance is required with an amended energy conservation standard denominated in terms of the IEER metric, should DOE adopt such a standard; although, any voluntary representations of IEER prior to the compliance date of any such standard must be based on testing according to appendix C1.

D. Updates to Industry Standards

As noted in section I.B. of this document, the DOE test procedure currently incorporates by reference ISO 13256–1:1998 and includes additional provisions for equipment set-up at 10 CFR 431.96(e), which provide specifications for addressing key information typically found in the installation and operation manuals. In the August 2022 NOPR, DOE proposed to adopt an amended test procedure for WSHPs in a new appendix C1 that would incorporate by reference AHRI 340/360–2022 for measuring efficiency using IEER. 87 FR 53302, 53311. Because AHRI 340/360–2022 references ANSI/ASHRAE 37–2009 for test provisions, DOE also proposed to incorporate by reference relevant sections of ANSI/ASHRAE 37–2009 in its amended test procedure for WSHPs. *Id.* at 87 FR 53312. Compared to the current test procedure, the key substantive changes that would result from DOE adopting the proposed test procedure included the following:

(1) A new energy efficiency descriptor, IEER, which incorporates part-load cooling performance;

(2) Modified test conditions for determining COP;

(3) Minimum external static pressure (''ESP'') requirements, instructions for setting airflow and ESP, and tolerances for airflow and ESP, and

(4) Specified liquid ESP requirements for units with integral pumps and a method to account for total pumping effect for units without integral pumps. *Id.* at 87 FR 53305.

In response to this proposal, DOE received multiple comments (summarized in the following sub-sections) urging DOE not to incorporate by reference AHRI 340/360–2022 as the test procedure for WSHPs, to continue to collaborate with industry on finalizing AHRI 600, and to instead adopt the revised industry test standard resulting from work on AHRI 600. As previously noted, after publication of the August 2022 NOPR, DOE worked with the AHRI Geothermal and WSHP STC to develop a revised version of AHRI 600 (AHRI 600–2023) to address the issues DOE raised in the August 2022 NOPR. As discussed further throughout this section, AHRI 600–2023 includes a method to determine IEER for WSHPs similar to that proposed in the August 2022 NOPR and addresses many of the concerns expressed by commenters in response to the August 2022 NOPR. As discussed, AHRI 600–2023 is intended to serve as the primary industry test procedure for WSHPs going forward and it does not reference any versions of ISO Standard 13256–1. Instead, AHRI 600–2023 references ANSI/ASHRAE 37–2009 and includes sufficient provisions for testing WSHPs that references to test provisions in ISO Standard 13256–1 or AHRI 340/360–2022 are not needed.

As discussed further throughout this section, in this final rule, DOE is adopting an amended test procedure that incorporates by reference AHRI 600–2023, with minor differences as explained further throughout the following sections of this document.

In the following sections, DOE summarizes comments received in response to the August 2022 NOPR with regard to industry standards.

1. Comments Regarding DOE's Authority

As discussed previously in this document, with respect to small, large, and very large commercial package air conditioning and heating equipment (of which WSHPs are a category), EPCA directs that when the generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE 90.1, are amended, the Secretary shall amend the DOE test procedure consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by clear and convincing evidence, that to do so would not meet the requirements for test procedures to produce results representative of an average use cycle and is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(A)–(B))

In response to the August 2022 NOPR, AHRI, MIAQ, and WaterFurnace expressed concern with DOE's proposal to adopt a test procedure different from the industry standard (*i.e.,* ISO 13256–1:1998 and the not yet published AHRI 600 standard), and the procedure cited in ASHRAE 90.1. (AHRI, No. 24 at pp. 1–2; MIAQ, No. 23 at pp. 1–2; WaterFurnace, No. 20 at p. 1) AHRI, MIAQ, and WaterFurnace noted that EPCA explicitly directs DOE to adopt the industry consensus test procedure cited in ASHRAE 90.1 and asserted that EPCA precludes DOE from adopting as a national standard a wholly different test procedure from that cited in ASHRAE 90.1. (*Id.*) These commenters urged DOE to adopt a revised test method only after it has been published by AHRI and adopted by ASHRAE in ASHRAE 90.1. (*Id.*)

MIAQ asserted further that EPCA requires DOE to justify by clear and convincing evidence each amendment or difference between AHRI 340/360–2022 and ISO 13256–1:1998. (MIAQ, No. 23 at p. 2) MIAQ commented that DOE has determined in past rulemakings that ISO 13256–1 is cost effective and representative of energy use. (*Id.*) MIAQ stated that any deviation from ASHRAE 90.1 requires quantification of the burden and that only modifications that reduce testing burden on manufacturers can be considered. (*Id.* at p. 3)

AHRI and MIAQ commented that DOE and outside stakeholders have been developing a consensus-based revision to the test procedure for commercial packaged air conditioners and heat pumps (''CUAC/HPs''). (AHRI,

No. 24 at p. 2; MIAQ, No. 23 at p. 2) AHRI and MIAQ further stated that after AHRI 600 has been finalized and adopted, AHRI will introduce the new test procedure to ASHRAE 90.1 to begin the procedural process for updates. (AHRI, No. 24 at p. 3; MIAQ, No. 23 at p. 2) AHRI and MIAQ commented that waiting to harmonize standards would establish consistent energy efficiency levels and design requirements between industry and Federal requirements, as well as comparable metrics and scope. (AHRI, No. 24 at p. 3; MIAQ, No. 23 at pp. 2–3) AHRI and MIAQ recommended that DOE continue to work with AHRI and other stakeholders to finalize AHRI 600 and support a proposed amendment to ASHRAE 90.1, which DOE could adopt as the national test procedure during the next rulemaking. (AHRI, No. 24 at p. 4; MIAQ, No. 23 at pp. 3, 9)

ClimateMaster commented that DOE has not followed a cooperative approach to improve the test methods as proposed in the August 2022 NOPR. (ClimateMaster, No. 22 at p. 1) ClimateMaster asserted that this seems to violate EPCA, which requires DOE to adopt the test procedure cited in ASHRAE 90.1. (*Id.*)

With regard to comments asserting that DOE does not have the authority to adopt a test procedure prior to its inclusion in ASHRAE 90.1, EPCA provides DOE with authority to adopt an amended test procedure in satisfaction of EPCA's 7-year-lookback review requirement for test procedures. (42 U.S.C. 6314(a)(1)(A)). Under its 7-year-lookback review, DOE must ensure that test procedures established are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) During its 7-year lookback review, DOE is directed by EPCA to evaluate whether an amended test procedure would more accurately or fully comply with those requirements, and if DOE determines an amended test procedure would do so, then DOE is required to prescribe such test procedures for the equipment class. (42 U.S.C. 6314(a)(1)(A)) It is important to note that under the 7-year lookback DOE does not need clear and convincing evidence that an amended test procedure would more accurately or fully comply with EPCA's requirements. (*Id.*) Rather, DOE must show that the amended test procedure is reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) For example, a test procedure referenced by ASHRAE 90.1 may not be reasonably representative because more representative test procedures are available. And a test procedure that was reasonably representative in the past may become unreasonably representative when newly available test procedures allow for better, more complete measurements. DOE's 7-year-lookback review under EPCA ensures that DOE is not bound to an industry test procedure that has not been updated and is no longer representative of current equipment.

DOE notes that submitted comments from AHRI, WaterFurnace, ClimateMaster, and MIAQ do not mention DOE's 7-year-lookback review and therefore only engaged with the review process under 42 U.S.C. 6314(a)(4)(A). AHRI stated in its written comment that DOE is mandated to adopt an industry test procedure only after that test procedure is adopted in ASHRAE 90.1 but identified no such mandate within the statute itself. It is important to note that the 7-year-lookback review language at issue here was added to EPCA in EISA 2007, well after the relevant ASHRAE 90.1 test procedure language was added in 1992. (*Compare* Sec. 302 of EISA 2007, Pub. L. 110–140, 121 STAT. 1552 (Dec. 19, 2007) with Sec. 121 of the Energy Policy Act of 1992, Pub. L. 106–486, 106 STAT. 2808 (Oct. 24, 1992)). Therefore, the most natural reading of the two provisions together is that Congress intended to add the 7-year-lookback review to those triggers for review of test procedures that already existed. The language of the 7-year-lookback review applies generally to all covered equipment. Rather than restrict DOE to an outdated test procedure in the manner the industry commenters suggest, EPCA instead compels DOE to use due diligence to review the totality of relevant and available information before settling on appropriate energy conservation standards and test procedures.

As a result, it is appropriate for DOE to consider in its 7-year-lookback whether amendments to the test procedure would more accurately produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and would not be unduly burdensome to conduct even without an update to AHSRAE 90–1. DOE finds here that the test procedure provided in the updated industry consensus test standard for WSHPs (AHRI 600–2023), and therefore the test procedure specified in the regulatory text of this final rule, is more representative without incurring undue burden, as discussed below, thereby satisfying EPCA's requirements.

DOE acknowledges that DOE has previously stated that it will only consider an update to ASHRAE 90.1 that modifies the referenced industry test procedure to be a trigger under that provision of the statute, as opposed to an update of just the industry test procedure itself. (*See e.g.,* 86 FR 35668, 35676 (July 7, 2021)). DOE stands by that position regarding what constitutes a triggering event in the context of ASHRAE equipment and does not consider the provisions in 42 U.S.C. 6314(a)(4) to have been triggered. However, that does not preclude DOE from considering an amended test procedure when reviewing DOE's test procedures under EPCA's 7-year-lookback provision. Not only does DOE have discretion to do so, but it has a statutory duty to do so, to ensure that its test procedures produce results that are representative of an average use cycle and are not unduly burdensome to conduct.

DOE has determined that the test procedure adopted in this final rule for WSHPs would improve the representativeness of the current Federal test procedure for WSHPs and would not be unduly burdensome. Specifically, DOE has concluded that testing WSHPs in accordance with AHRI 600–2023 would provide more representative results and more fully comply with the requirements of paragraph (2) of 42 U.S.C. 6314(a) than testing in accordance with the currently referenced standard ISO 13256–1:1998, as discussed in more detail in section III.D.6 of this final rule. And while clear and convincing evidence is not needed when amending a test procedure under the 7-year-lookback, DOE finds that the test procedure amendments adopted here are supported by clear and convincing evidence as outlined in this final rule. DOE discusses the specific test procedure updates included in appendix C1, resulting from the incorporation by reference of AHRI 600–2023, in sections III.E and III.F of this final rule. Therefore, DOE is adopting an amended test procedure for WSHPs that incorporates by reference AHRI 600–2023, with minor deviations. With regard to the assertion by AHRI and MIAQ that any deviation from ASHRAE 90.1 requires quantification of the burden, and MIAQ's assertion that only modifications that reduce testing burden on manufacturers can be considered, DOE does not agree that EPCA requires DOE to consider only deviations that

would reduce burden. Rather, EPCA requires only that DOE ensure that test procedures established are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

With regard to the assertion by AHRI and MIAQ that EPCA requires DOE to justify by clear and convincing evidence each amendment or difference from the industry test procedure referenced by ASHRAE 90.1, DOE does not agree that EPCA requires such a line-by-line assessment of an amended test procedure. First, as stated previously, there is no requirement for clear and convincing evidence in EPCA for a test procedure amendment under the 7-year-lookback. Additionally, if DOE were amending a test procedure pursuant to the ASHRAE trigger, EPCA requires only that DOE shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless it determines, supported by clear and convincing evidence, that to do so would not meet the requirements of EPCA (42 U.S.C. 6314 (a)(4)(B)). If DOE makes such a determination, DOE may establish an amended test procedure, but there is no requirement for DOE to show, by clear and convincing evidence, that DOE's amended test procedure is reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and are not unduly burdensome to conduct. (*See* 42 U.S.C. 6314(a)(2)). Additionally, if DOE does not make such a determination, there is no requirement that DOE show, by clear and convincing evidence, that an amended test procedure, which is consistent with the industry test procedure, is reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and are not unduly burdensome to conduct.

2. Comments Regarding DOE's Test Procedure Development Process

In response to the June 2022 NOPR, DOE received comments regarding its rulemaking development process. AHRI recommended that DOE follow a transparent, cooperative, or consensus-based regulatory development process. (AHRI, No. 24 at p. 4) AHRI commented that, in the past, DOE has had difficulty duplicating test results without the help and guidance of manufacturers and AHRI testing facilities and that the complex controls and operational characteristics of WSHP equipment require manufacturer and testing facility experience to test properly. (*Id.*) AHRI acknowledged that DOE has tested 15 units from the WSHP industry but stated that DOE did not release the data and results of the testing. (*Id.*) AHRI expressed further concern that the testing cited in the August 2022 NOPR was not shared with the relevant AHRI committee and requested that DOE share the results of its findings with stakeholders in order to allow for validation and review. (*Id.* at pp. 2, 4)

AHRI recommended that DOE work with industry on finalizing AHRI 600, conduct any necessary testing or calculations to develop a document agreed upon by DOE and relevant stakeholders, and follow the proper procedures to introduce the finalized test procedure and updated efficiency standards in ASHRAE 90.1. (*Id.*) AHRI commented that it will support the necessary updates to the Federal procedure and metrics after DOE takes the aforementioned steps. (*Id.*)

ClimateMaster commented that DOE did not follow a cooperative process to improve the test methods for WSHPs and that neither AHRI nor the WSHP industry was consulted in a working group setting with other stakeholders, which was inconsistent with past and current industry approaches. (ClimateMaster, No. 22 at p. 1)

WaterFurnace commented that it believed a more transparent and consensus-based development process is warranted before DOE implements new WSHP test procedures and that DOE should seek industry and AHRI input in order to validate and review the testing results. (WaterFurnace, No. 20 p. 2) WaterFurnace recommended that DOE implement an Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') Working Group for all future undertakings to propose substantial changes in regulatory policy so as to work out complex issues in a common forum with industry and AHRI. (*Id.*)

With respect to the comments from AHRI, ClimateMaster, and WaterFurnace, DOE notes that it may establish a negotiated rulemaking working group under ASRAC in accordance with the Federal Advisory Committee Act (''FACA'') and the Negotiated Rulemaking Act (''NRA'') (5 U.S.C. 561–570, Pub. L. 104–320) to negotiate proposed test procedures and amended energy conservation standards if DOE determines that the use of the negotiated rulemaking process is in the public interest according to the requirements of FACA and in a manner consistent with the requirements of the NRA. However, in this rulemaking, DOE is following the traditional rulemaking notice-and-comment process.

DOE recognizes the benefits of developing test procedures through a consensus-based process and notes that DOE has participated in the AHRI process and has worked with the AHRI Geothermal and WSHP STC in developing AHRI 600–2023, which is incorporated by reference in this final rule. As noted in the August 2022 NOPR, DOE has participated in AHRI committee meetings working to develop AHRI 600 since 2019. *See* 87 FR 53302, 53308–53309. In particular, DOE brought up many of the concerns raised in August 2022 NOPR in ISO 13256–1 and AHRI 600 meetings for several years prior to the publication of the August 2022 NOPR, but the committees declined to address these issues in the draft industry test procedures at that time. At the time of drafting of the August 2022 NOPR, AHRI 600 was still in development and had not yet published. In the August 2022 NOPR, DOE outlined its understanding that the intent of AHRI 600 would be to provide a method for calculation of IEER for WSHPs based on testing conducted according to ISO 13256–1:1998. *Id.* at 87 FR 53309. In the August 2022 NOPR, DOE tentatively concluded that the general methodology in AHRI 600 for determining IEER is appropriate. *Id.* However, DOE identified several aspects of the methodology that warrant further modifications. *Id.* In the August 2022 NOPR, DOE noted that it could not speculate as to the substantive outputs of the ISO 13256–1 National deviation and the AHRI 600 committee's efforts. *Id.* Consistent with DOE's procedure for notice-and-comment rulemakings, DOE also conducted the NOPR public meeting that provided opportunity for stakeholders to provide feedback on DOE's proposals. The feedback DOE received in both NOPR public meeting comments and written comments was considered in subsequent AHRI 600 committee meetings and drafting of this final rule.

Since the publication of the August 2022 NOPR, DOE continued to work with industry in AHRI 600 committee, as recommended by commenters, to address the test procedure concerns DOE raised in the August 2022 NOPR with the intent that a revised industry test procedure specific to WSHPs could be adopted in a final rule. Rather than continue to simultaneously modify and maintain ISO 13256–1 and AHRI–600, the committee members voted to merge them into a comprehensive unified test procedure, AHRI 600. More specifically, the methodology specified in ISO 13256–1 has been incorporated into

AHRI 600–2023. Therefore, AHRI 600–2023 does not reference ISO 13256–1.

Regarding AHRI's comment about sharing data, DOE presented the results of its testing in the August 2022 NOPR. *Id.* at 87 FR 53314–53317. Based on participation in AHRI 600 committee meetings following the August 2022 NOPR, additional data from DOE's investigative testing was not needed for the committee to reach resolution on the content of AHRI 600–2023.

On September 11, 2023, AHRI 600–2023 was published. DOE notes that the statutory deadline for publishing a test procedure final rule for WSHPs was May 16, 2019. (42 U.S.C. 6314(a)(1)) Given EPCA's statutory requirement to review the appropriate test procedures for WSHPs every seven years, DOE has concluded that it would be neither appropriate nor permissible to delay the current rulemaking for the WSHP test procedure until after ASHRAE 90.1 adopts AHRI 600–2023 as the test procedure for WSHPs. To avoid any further delay, DOE is adopting a test procedure for WSHPs that incorporates by reference AHRI 600–2023, with minor deviations.

3. Comments Supporting the Adoption of AHRI 340/360–2022

In response to the June 2022 NOPR, some commenters supported adopting AHRI 340/360–2022 in the WSHP test procedure. NEEA generally supported DOE's efforts to align the WSHP test procedure with other water-cooled unitary systems, including by integrating fan energy into the test procedure for ducted WSHPs. (NEEA, No. 25 at p. 1) In particular, NEEA supported DOE's proposal to align the WSHP test procedure with AHRI 340/360–2022 and ANSI/ASHRAE 37–2009. (*Id.* at p. 2) NEEA stated that aligning the testing of WSHPs with ANSI/ASHRAE 37–2009 would ensure that WSHP ratings will be consistent with other water-cooled and direct expansion cooling systems. (*Id.*) NEEA also supported the introduction of an IEER metric rather than rating only with EER. (*Id.*) NEEA stated that the proposed test procedure would impact the current modeling approach for WSHP standard reference systems used to determine total system performance ratio in the 2018 Washington State Energy Code, but NEEA acknowledged that potential advancements to the test procedure and ratings metric would provide an important improvement in representativeness for this equipment. (*Id.* at p. 1)

NYSERDA generally supported DOE's proposed amendments for the WSHP test procedure and concurred with DOE's tentative determination that the changes would improve the representativeness of the WSHP test procedure. (NYSERDA, No. 21 at pp. 1–2) NYSERDA asserted that this would spur growth in the market for WSHPs, including geothermal heat pumps. (*Id.* at p.2)

As discussed previously, in this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1 in lieu of incorporating by reference AHRI 340/360–2022 as proposed in the August 2022 NOPR. DOE notes, however, that the majority of the technical content from the proposed test procedure in the August 2022 NOPR remains consistent in the test procedure finalized in this final rule. Any changes to technical provisions from the August 2022 NOPR proposal were due to industry consensus culminating in the AHRI 600–2023 standard. Throughout this final rule, DOE discusses in detail the technical differences between the test procedure proposed in the August 2022 NOPR and the version finalized in this final rule.

4. Comments Opposing the Adoption of AHRI 340/360–2022

Other commenters opposed the proposal in the August 2022 NOPR to adopt AHRI 340/360–2022 in the WSHP test procedure. AHRI and MIAQ expressed concern that the impact on manufacturers of DOE's proposal to update the WSHP test procedure has not been quantified. (AHRI, No. 24 at p. 2; MIAQ, No. 23 at p. 3) AHRI and MIAQ stated that the capability of testing WSHPs to AHRI 340/360–2022 has not been assessed by third-part test labs. (*Id.*)

AHRI and MIAQ noted that an ASRAC Working Group has been formed in an effort to negotiate test procedures and energy efficiency standards for CUAC/HPs, the scope of which stands to result in significant modifications to AHRI 340/360–2022 and the efficiency measures for such equipment. (AHRI, No. 24, at p. 2; MIAQ, No. 23 at p. 2) AHRI and MIAQ further noted, however, that WSHPs are outside the scope of these efforts, potentially leaving a significant gap in ratings (*i.e.,* were WSHPs to be rated using AHRI 340/360). (*Id.*)

WaterFurnace expressed concern regarding DOE's sampling and testing procedure for modifying AHRI 340/360, especially considering the complexity of the product's controls and operational characteristics and taking into account past instances in which DOE has struggled to duplicate test results without manufacturer and AHRI testing support. (WaterFurnace, No. 20 at p. 2)

WaterFurnace agreed with AHRI's concerns that the impact on manufacturers of DOE's proposal to update test procedures has not been adequately quantified, nor was it clear whether third-party test labs have the capability to accommodate the proposed changes. (*Id.* at p. 2)

WaterFurnace, ClimateMaster, Enertech, and FHP all expressed concern that DOE's proposal to test WSHPs using AHRI 340/360–2022 would require manufacturers to test WSHPs to two different test standards because geothermal applications for WSHPs would still require testing to ISO 13256–1. (WaterFurnace, No. 20 at p. 3; ClimateMaster, No. 22 at p. 1; Enertech, No. 19 at p. 1; FHP, No. 26 at p. 3) WaterFurnace noted that ISO 13256–1 is already referenced in several Federal, State, and local codes. (WaterFurnace, No. 20 at p. 3) WaterFurnace and ClimateMaster stated that implementing a dual certification process would be burdensome for manufacturers. (WaterFurnace, No. 20 at p. 3; ClimateMaster, No. 22 p. 1) Enertech also noted that Federal and State tax credits specifically reference ISO/AHRI 13256–1:1998 for efficiency ratings and that the ENERGY STAR specifications directly reference the ISO 13256–1:1998 standard for the ENERGY STAR Tier 3 efficiency requirements. (Enertech, No. 19 at p. 1)

WaterFurnace asserted that DOE underestimated the significance and the burden that the proposed changes to the WSHP test procedure would impose upon manufacturers and industry players. (WaterFurnace, No. 20 at p. 3) WaterFurnace identified the following assumptions and shortcomings in AHRI 340/360–2022 that it stated were not appropriately addressed in the August 2022 NOPR:

(1) While the August 2022 NOPR stated that IEER can be calculated and an interpolation can be performed using existing data from ISO 13256–1, WaterFurnace determined that the entering air, water flow, external static and airflow conditions differ from AHRI 340/360–2022, which will therefore require additional testing by the manufacturer and the implementation of a new certification program;

(2) Currently, performance mapping capability is available across a wide range of entering water temperatures (''EWT'') used in modeling software such as EQuest and DOE's EnergyPlus, and all of this detail would be lost with the implementation of AHRI 340/360–2022 because it only presents a single IEER cooling metric and a single heating point;

(3) Provisions should be added under AHRI 340/360–2022 for hybrid heat pumps, which are unique in their capability for refrigerant cooling with other non-refrigerant heating capability;

(4) Provisions should be added under AHRI 340/360–2022 for split configurations, which are offered for smaller WSHPs;

(5) Provisions should be added under AHRI 340/360–2022 for small WSHPs with non-ducted applications (*e.g.,* console units), along with language that takes into account the fact that many of these units are installed into residential buildings with substantial heating that would not fit the AHRI 340/360–2022 conditions;

(6) While DOE proposed to adopt heating test conditions for WSHPs that are not specified in AHRI 340/360–2022, this overlooks other testing requirements and language that would need to be addressed (*e.g.,* minimum and maximum operating conditions) in order to adequately add heating tests to a cooling-only standard;

(7) Provisions should be added under AHRI 340/360–2022 for antifreeze blends and their fluid characteristics (*i.e.,* alcohols, salts, and glycols);

(8) Test procedures would need to be modified to account for smaller WSHP units, as AHRI 340/360–2022 requires an airflow tolerance of less than 3 percent and is thus designed around larger product designs with drives and adjustable sheaves that accommodate this airflow capability;

(9) Although AHRI 340/360–2022 is primarily an air-source standard that utilizes air and refrigerant enthalpy test methods, water-source equipment is more consistently and accurately tested with a liquid enthalpy test method and would need to use air or refrigerant enthalpy only as secondary methods—and, furthermore, this process would be inconsistent with part load measurements under AHRI 340/360–2022;

(10) Manufacturer-specified liquid flow rate is preferred over the AHRI 340/360–2022 method of setting liquid flow rate using a 10 °F temperature rise to establish flow rates;

(11) Continuous 24/7 fan operation is an outdated idea according to ASHRAE 90.1; and

(12) Issues addressed by Working Groups under ASRAC will likely result in massive changes to AHRI 340/360 regarding air-side measurements and will take focus away from necessary modifications to provisions for water-cooled units and, thus, changes for water-cooled units to AHRI 340/360 will likely be of secondary importance to the ASRAC committee. (*Id.* at pp. 3–4)

WaterFurnace also commented that because AHRI 340/360–2022 is primarily an air-source standard, AHRI 340/360–2022's comparatively small water-cooled section is used to certify approximately 1,000 units per year in contrast to the 200,000 unit sales per year under the AHRI/ISO 13256 certification programs. (*Id.* at p. 5) Therefore, WaterFurnace noted that moving testing of WSHPs (with much higher shipments) to the smaller water-cooled section of AHRI 340/360–2022 would not be logical considering the noted changes required. (*Id.*)

WaterFurnace commented that changing to a different AHRI 340/360–2022 standard and separating out geothermal applications to ISO 13256 would be disruptive to both the water-source and geothermal industries at a time when the use of heat pumps is being encouraged by national, state, and local regulations as a carbon-reduction solution. (*Id.*) WaterFurnace stated that tax credits and rebates based upon AHRI/ISO 13256 performance have been legislatively codified and will be difficult to change, and further noted that the Inflation Reduction Act references ASHRAE 90.1 and AHRI/ISO 13256 as a measurement of performance. (*Id.* at p. 6) WaterFurnace stated that other governmental programs such as ENERGY STAR have specifications and benefits based on AHRI/ISO 13256 performance certification and that decarbonization policy programs by utilities, cities, and states rely on such certification as well. (*Id.*)

ClimateMaster commented that DOE would need to address the following issues with AHRI 340/360–2022:

(1) AHRI 340/360–2022 needs to be updated to include the appendix C1 additions, a process that will likely be delayed by a current ASRAC working group undertaking to amend the current AHRI 340/360–2022 test procedures with a focus on air-source equipment;

(2) AHRI 340/360–2022 does not include test requirements for water-source heating;

(3) AHRI 340/360–2022 does not include test provisions for non-ducted equipment;

(4) The airflow setting and tolerance specified by AHRI 340/360–2022 does not cover or is incompatible with current WSHP equipment;

(5) AHRI 340/360–2022 does not include a pump power adder for all equipment sizes, nor is DOE's proposal to utilize the pump power adder in AHRI 920 representative of installed WSHP systems;

(6) AHRI 340/360–2022 does not include glycols or antifreeze solutions in the method of test, and the recommended solution is not representative of the fluids used for WSHPs in the field or test laboratories currently used in the development, qualification, and compliance processes; and

(7) The refrigerant charging requirements included in AHRI 340/360–2022 are not applicable, accurate, or relevant to WSHP systems. (ClimateMaster, No. 22 at pp. 1–2)

Enertech commented that AHRI 340/360–2022 lacks testing parameters for water source heating, testing parameters for non-ducted equipment, testing methods utilizing antifreeze blends, and parameters for pump power adder for small equipment. (Enertech, No. 19 at p. 1) Enertech noted that AHRI 340/360–2022 requires a ±3 percent airflow tolerance during testing, which Enertech asserted is unrealistic for small-capacity equipment. (*Id.*) For these reasons, Enertech disagreed that new efficiency ratings could be interpolated from conditions common to the WSHP industry and asserted that new testing would be required for all products offered by any manufacturer. (*Id.*) Enertech stated that adopting AHRI 340/360–2022 as the DOE test procedure for WSHPs would result in long-term disruptions to the geothermal and WSHP industries. (*Id.* at p. 2)

FHP commented that adopting test methods per AHRI 340/360–2022 would require additional testing effort, time, and resources, and would result in additional costs to the industry. (FHP, No. 26 at p. 3) FHP commented further that AHRI 340/360–2022 contains differences in standard test conditions that would require additional testing as well as changes to (1) the design of the units to ensure 10 °F temperature rise on the water side and (2) the fan/motor selections and programs to maintain the proper air flow at defined static pressures and airflow tolerances. (*Id.*) FHP stated that the use of two standards may split the current WSHP product designs, thereby adding permanent design burden to current product offerings. (*Id.*)

FHP stated that the proposed changes to the WSHP test procedure could be the most impactful regulatory issue for the WSHP industry and that the industry's resources are completely dedicated to the development of equipment that uses low-global warming potential refrigerants through January 1, 2025. (FHP, No. 26 at p. 5) FHP expressed concern about the impact of moving to an entirely new test procedure that would require re-testing, re-designing, and potentially re-certifying most of its basic model groups. (*Id.*) FHP also

expressed concerns about the additional resources and maintenance potentially required by having two separate product designs and validations for WSHPs. (*Id.*)

FHP also stated that current AEDMs are based on the leading industry standard for these types of equipment. (*Id.* at p. 2) More specifically, FHP stated that its current AEDM is based on the ISO 13256–1:1998 test standard and that DOE's proposal to reference AHRI 340/360–2022 as the test procedure for WSHPs would require additional testing and new AEDMs. (*Id.*) FHP commented that even reduced testing to validate AEDMs would be unduly burdensome for such a small market. (*Id.*)

During the public meeting, AAON commented that the amount of testing in the proposed test procedure was rather extreme and asked DOE to share the testing burden assessment. (Public Meeting Transcript, No. 17 at p. 60)

GeoExchange commented that manufacturers of geothermal heat pumps have significant concerns with the August 2022 NOPR as written and believe it will subject WSHPs and geothermal heat pumps to competing and inconsistent certification standards. (GeoExchange, No. 29 at p. 1) GeoExchange commented that these issues will complicate production of these products and increase costs for consumers. (*Id.*) GeoExchange stated that the timing of the August 2022 NOPR coincides with efforts by the industry to complete work on its development of a standard that recognizes the overlap between different applications of heat pump technology and minimizes unnecessary disruptions for manufacturers. (*Id.*)

DOE appreciates these comments regarding the proposal to adopt AHRI 340/360–2022 in the WSHP test procedure. As discussed, in this final rule, DOE is no longer adopting AHRI 340–360–2022 and is adopting instead an amended test procedure for WSHPs that incorporates by reference AHRI 600–2023. Because AHRI 600–2023 was developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, DOE surmises that the testing approach specified in AHRI 600–2023 represents the prevailing industry consensus regarding the most appropriate method of testing WSHPs and addresses the issues raised by commenters regarding DOE's proposal to adopt AHRI 340/360–2022 as the test procedure for WSHPs. See sections III.E and III.F of this final rule for discussion of specific test procedure topics raised by interested parties in response to the August 2022 NOPR.

Further, in response to the test burden comments, DOE did quantify per-test burden of the proposed test procedure in the August 2022 NOPR and found that the proposed test procedure was not unduly burdensome to conduct. 87 FR 53302, 53340. A similar analysis is presented in this final rule (see section III.I of this document for details), and the same conclusion is reached. Additionally, as discussed in this document, DOE is adopting a test procedure incorporating by reference the industry consensus test standard, AHRI 600–2023. Therefore, DOE has determined that the amended test procedure will not increase burden as compared to the latest draft industry consensus test standard.

5. Comments Encouraging the Adoption of AHRI 600

Numerous commenters encouraged DOE to adopt AHRI 600 in an amended WSHP test procedure in response to the August 2022 NOPR. AHRI recommended that DOE refrain from adopting AHRI 340/360–2022 for WSHPs in favor of continuing to collaborate with industry on finalizing AHRI 600. (AHRI, No. 24 at p. 4) AHRI commented that AHRI 600 has been under development for several years and that, despite some delays, is steadily progressing. (*Id.*) AHRI commented that during the discussions for the development of AHRI 600, the committee considered applying AHRI 340/360–2022 to calculate IEER. (*Id.*) AHRI commented that it continues to improve AHRI 600 test procedures (*e.g.,* by resolving issues to fan power, external static pressure, water temperature, and subsequent efficiency levels) and that AHRI will continue committing to frequent meetings to satisfactorily resolve the issues raised in August 2022 NOPR. (*Id.*)

WaterFurnace stated that AHRI 600 draft standard was released in October 2022 and achieves the objectives of the August 2022 NOPR without industry distractions. (WaterFurnace, No. 20 p. 5) WaterFurnace commented that AHRI 600 standard is on track for committee review by October 31, 2023. (*Id.*)

WaterFurnace stated that the quickest way to implement appropriate changes to WSHP test procedures would be to adopt versions of AHRI 600 and ISO 13256–1, as modifying test procedures to comply with AHRI 340/360–2022 would entail substantial changes that will delay the implementation process. (*Id.* at p. 4)

WaterFurnace commented that it supports development of AHRI 600 test procedure and recommended that the DOE test procedure reference it directly instead of AHRI 340/360–2022. (*Id.* at p. 5) WaterFurnace stated that the AHRI 600 standard can resolve most of the issues DOE identified in the August 2022 NOPR regarding the current WSHP test procedure. (*Id.*) WaterFurnace recommended that DOE re-evaluate the August 2022 NOPR proposal and support WaterFurnace's proposal to quickly adopt AHRI 600 and the national deviation updates to AHRI/ISO 13256. (*Id.* at p. 11) WaterFurnace commented that doing so will help industry achieve DOE's desired goals faster and with less disruption. (*Id.*)

WaterFurnace commented that it supports implementation of an updated AHRI/ISO 13256:1998 with a targeted national deviation and revised annexes. (*Id.* at p. 5) WaterFurnace commented that an updated AHRI/ISO 13256:1998 with a targeted national deviation can solve specific issues mentioned in the August 2022 NOPR regarding AHRI/ISO 13256 with changes that would not be substantial, stating that the method of testing WaterFurnace follows aligns with the August 2022 NOPR. (*Id.*) WaterFurnace commented that many of the issues raised by DOE center on specific issues and test methods currently in use that can be documented and solved with a national deviation from AHRI/ISO 13256. (*Id.*) WaterFurnace stated that it has developed a draft of this national deviation that will address the noted shortcomings and can be completed in a similar time frame as AHRI 600 approval. (*Id.*)

ClimateMaster commented that DOE's proposal to move WSHPs to AHRI 340/360–2022 would create too significant a change in the industry and instead recommended considering AHRI 600, which uses existing ISO/AHRI 13256–1 certified data to mathematically calculate the system IEER. (ClimateMaster, No. 22 at p. 1) ClimateMaster further commented that DOE should consider updating the ISO/AHRI 13256–1:1998 standard to include national deviations to address specific issues such as: (1) modifying refrigerant charging and airflow/ESP requirements; and (2) the need to include a reference to ASHRAE 37 and provisions for air sampling for air-side capacity measurements. (*Id.* at p. 2)

Enertech suggested adopting AHRI 600 for calculating IEER rather than the AHRI 340/360–2022 method. (Enertech, No. 19 at p. 2)

MIAQ recommended that DOE work with industry to finalize AHRI Standard 600, conduct any necessary testing/calculations to develop a crosswalk, and follow proper procedures to introduce the finalized procedure and updated

efficiency standards in ASHRAE 90.1. (MIAQ, No. 23 at p. 9)

Trane recommended that DOE move from a full-load metric and test procedure to one that is more representative of an energy use cycle, such as a part-load test procedure. (Trane, No. 28 at p. 3) Trane commented that the most accurate and representative test procedure is AHRI 600, not AHRI 340/360–2022 as proposed in the August 2022 NOPR. (*Id.*) Trane noted that AHRI 600 draft is now published and seeking public comments for the final version. (*Id.* at p. 2)

As discussed, in this final rule, DOE is adopting an amended test procedure for WSHPs incorporating by reference AHRI 600–2023. As noted in the previous discussion, the methodology specified in ISO 13256–1 has been incorporated into the AHRI 600–2023, which represents the latest industry consensus test standard for WSHPs and moves away from using ISO 13256–1, thus rendering unnecessary a national deviation to ISO 13256–1. Having been developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, DOE surmises that the testing approach specified in AHRI 600–2023 represents the prevailing industry consensus regarding the most appropriate method of testing WSHPs.

6. Finalized DOE Test Procedure

In summary, DOE is adopting an amended test procedure for WSHPs that incorporates by reference AHRI 600–2023, with minor deviations, in this final rule. DOE has determined that the test methods specified in AHRI 600–2023 (which are largely consistent with the provisions adopted in appendix C1 of this final rule) would produce test results that better reflect energy efficiency of WSHPs during a representative average use cycle than the current DOE test procedure and ISO 13256–1:1998. DOE notes that the IEER metric is representative of cooling efficiency for WSHPs on an annual basis and is more representative than the current EER metric, which captures the system performance at a single, full-load operating point. DOE also notes that the other test procedure amendments incorporated in this final rule better ensure accurate and repeatable measurements and ensure that representative test conditions are maintained during testing. These changes include:

(1) Minimum ESP requirements, instructions for setting airflow and ESP, and tolerances for airflow and ESP;

(2) Operating tolerance for voltage;

(3) Different indoor air conditions for testing;

(4) Refrigerant charging instructions for cases where they are not provided by the manufacturer;

(5) Use of the primary capacity measurement (*i.e.,* indoor air enthalpy method) as the value for capacity, and different provisions for required agreement between primary and secondary capacity measurements;

(6) Provisions for split systems, such as accounting for compressor heat and refrigerant line losses;

(7) Measurement of duct losses for ducted units;

(8) Standardized heat capacity of water and brine; and

(9) A calculation for discharge coefficients.

The subsequent sections of this final rule discuss aspects of the finalized test procedure that differ from the proposal in the August 2022 NOPR. DOE has determined that these updates improve the representativeness of the test procedure for WSHPs. These include but are not limited to:

(1) Updated pump power adder, developed during the AHRI 600–2023 process;

(2) ESP requirements for large units >65,000 Btu/h consistent with levels from the December 2022 term sheet of recommendations regarding test procedures for air-cooled commercial unitary air conditioners and heat pumps (''ACUACs and ACUHPs''), referred to hereafter as ''the ACUAC and ACUHP Working Group TP Term Sheet'' (See Document No. 65 in Docket No. EERE–2022–BT–STD–0015);

(3) No option to physically test at the IEER conditions and to instead require testing at all three ISO 13256–1:1998 conditions;

(4) Updated part-load EWT;

(5) Specifying a maximum water flow rate instead of fixed inlet and outlet water conditions;

(6) Different test provisions for coil-only units, including adjustments to default fan power;

(7) Different required fluid—a methanol solution—and different fluid properties specified;

(8) Some changes to airflow provisions, which are consistent with DOE's test procedure for central air conditioners and heat pumps at appendix M1 to subpart B of 10 CFR part 430 instead of AHRI 340/360–2022;

(9) IEER cyclic degradation equation that does not assume continuous fan operation; and

(10) Heating test temperature of 50 °F instead of 55 °F.

As discussed, DOE recognizes that the test method in AHRI 600–2023 and incorporated by reference into appendix C1 represents an industry consensus test procedure that is likely to be considered for future updates to ASHRAE 90.1.

Accordingly, for the foregoing reasons and those discussed in the subsequent sections of this final rule, DOE is incorporating by reference AHRI 600–2023 into the amended Federal test procedure for WSHPs. DOE has determined that the amended test procedure is reasonably designed to produce results that are representative of the energy efficiency of that covered equipment during an average use cycle and is not unduly burdensome to conduct. DOE notes also that use of appendix C1 will not be required until the compliance date of any amended standards denominated in terms of IEER, should DOE adopt such standards.

E. Efficiency Metrics

1. IEER

As discussed previously, DOE's current test procedure for WSHPs measures cooling-mode performance in terms of the EER metric, the current regulatory metric. 10 CFR 431.96. EER captures WSHP performance at a single, full-load operating point in cooling mode (*i.e.,* a single EWT) and does not provide a seasonal or load-weighted measure of energy efficiency. A seasonal metric is a weighted average of the performance of cooling or heating systems at different outdoor conditions intended to represent average efficiency over a full cooling or heating season. Several categories of commercial package air-conditioning and heating equipment are rated using a seasonal or part-load metric, such as IEER. IEER is a weighted average of efficiency at four load levels representing 100, 75, 50, and 25 percent of full-load capacity, each measured at a specified outdoor condition that is representative of field operation at the given load level. In general, the IEER metric provides a more representative measure of field performance than EER by weighting the full-load and part-load efficiencies by the average amount of time equipment spends operating at each load level. Table 1 of ISO 13256–1:1998, the industry test standard incorporated by reference into DOE's current WSHP test procedure, and Table 2 of ISO 13256–1:2021 both specify EWT conditions to be used for developing part-load ratings of EER for WSHPs with capacity control (tested at minimum compressor speed). However, part-load EER ratings are not addressed in the current DOE test procedure. Further, each part-load rating captures operation only at a single compressor speed and EWT

condition rather than operation across a range of temperatures and compressor speeds, as would be captured by an IEER metric. Neither ISO 13256–1:1998 nor ISO 13256–1:2021 include seasonal metrics.

In the August 2022 NOPR, DOE tentatively determined that use of a seasonal efficiency metric would be more representative of the average use cycle of a unit as compared to the current EER metric. 87 FR 53302, 53313. Accordingly, DOE proposed to adopt certain provisions of AHRI 340/360–2022 and use the IEER metric specified in section 6.2 of AHRI 340/360–2022 for WSHPs. *Id.* Specifically, DOE proposed that IEER for WSHPs be calculated based on the EWT conditions specified in Table 9 of AHRI 340/360–2022 (*i.e.,* 85 °F, 73.5 °F, 62 °F, and 55 °F). *Id.* DOE referred to the approach of testing at these AHRI 340/360–2022 EWTs as ''option 1'' in the August 2022 NOPR. *Id.* at 87 FR 53316.

In addition, DOE acknowledged in the August 2022 NOPR that adopting the IEER metric for WSHPs would increase the number of required cooling-mode tests from one to four. *Id.* at 87 FR 53313. DOE also discussed its understanding that the future updated version of AHRI 600 would provide for calculating IEER from test results measured at the EWTs specified in Table 1 of ISO 13256–1:1998. *Id.* DOE stated that determining IEER via interpolation and extrapolation from testing at the ISO 13256–1:1998 EWTs, rather than from additional testing at the IEER EWTs specified in AHRI 340/360–2022, may reduce overall testing burden for manufacturers. *Id.* at 87 FR 53314. Consistent with this approach, DOE also proposed to allow determination of IEER via interpolation and extrapolation (''option 2'') based on testing at the full-load and part-load EWT conditions specified in Table 1 of ISO 13256–1:1998 (*i.e.,* 86 °F, 77 °F, and 59 °F for full-load tests and 86 °F, 68 °F, and 59 °F for part-load tests). *Id.* at 87 FR 53316. DOE proposed that the tests for option 2 would be performed using the same test provisions (aside from the EWTs) from AHRI 340/360–2022, ANSI/ASHRAE 37–2009, and sections 2 through 4 and 7 of proposed appendix C1 as the tests for option 1. *Id.*

In the August 2022 NOPR, DOE presented test data that indicated that determining EER by interpolating/extrapolating cooling capacity and total power would result in closer agreement to tested values than directly interpolating/extrapolating EER. *Id.* at 87 FR 53314–53315. Based on these findings, DOE proposed to specify interpolation/extrapolation using the cooling capacity and total power as opposed to EER directly. *Id.* at 87 FR 53316. DOE also presented data in the August 2022 NOPR indicating that for variable-speed WSHPs with higher (*i.e.,* better) EER performance at intermediate compressor speeds than at maximum or minimum compressor speeds, the proposed interpolation and extrapolation method would result in a lower (*i.e.,* worse) calculated IEER than testing at the IEER conditions specified in AHRI 340/360–2022. *Id.* at 87 FR 53315–53316. DOE discussed its understanding from participation in AHRI 600 committee meetings that many manufacturers would prefer the option to use the interpolation and extrapolation method for variable-speed WSHPs, even if it results in lower IEER ratings, because it would result in less overall testing burden than testing at each of the AHRI 340/360–2022 conditions. *Id.* at 87 FR 53316.

DOE also proposed that if represented values for a basic model are determined with an AEDM, the AEDM could use either option 1 or option 2 for determining IEER per the proposed test procedure in appendix C1. *Id.*

DOE requested comment on the proposal to allow determination of IEER using two different methods: (1) testing in accordance with AHRI 340/360–2022; or (2) interpolation and extrapolation of cooling capacity and power values based on testing in accordance with the proposed test procedure at the EWTs specified in Table 1 of ISO 13256–1:1998. *Id.* DOE sought feedback on the proposed method for calculating IEER via interpolation and extrapolation, and on whether this approach would serve as a potential burden-reducing option as compared to testing at the AHRI 340/360–2022 conditions. *Id.* DOE also requested comment on whether the proposed methodology to determine IEER based on interpolation and extrapolation is appropriate for variable-speed units. *Id.* DOE noted it would consider requiring variable-speed equipment be tested only according to AHRI 340/360–2022 and, thus, testing physically at the IEER EWTs, if suggested by commenters. *Id.* Finally, DOE sought feedback on whether the proposed interpolation and extrapolation method should be based on testing at the ISO 13256–1:2021 EWTs (which differ from the ISO 13256–1:1998 EWTs for certain test points). *Id.*

Some commenters opposed DOE's proposals regarding the IEER metric in the August 2022 NOPR. ClimateMaster, MIAQ, and WaterFurnace recommended that DOE adopt the test methods specified in AHRI 600 instead of AHRI 340/360–2022 for calculating the IEER of WSHPs. (ClimateMaster, No. 22 at pp. 3–5; MIAQ, No. 23 at p. 4; Waterfurnace, No. 20 at pp. 6–7) MIAQ stated that AHRI 600 will provide a method for calculating a seasonal cooling efficiency metric for WSHPs (*i.e.,* IEER) based on testing conducted according to ISO 13256–1:1998. (MIAQ, No. 23 at p. 4) MIAQ stated that that the estimated AHRI 600 approval date of October 1, 2023 would meet DOE's timeline for adopting the standard. (*Id.*) ClimateMaster commented that adopting the test methods specified in AHRI 340/360–2022 would require manufacturers to certify products under two programs (*i.e.,* AHRI 340–360 and ISO/AHRI 13256), which is unprecedented in the industry, and would pose challenges for manufacturers, third-party labs, and partners to test and maintain two certification programs. (ClimateMaster, No. 22 at p. 3)

ClimateMaster recommended that DOE utilize data created through ISO 13256–1:1998 to interpolate per the procedure provided in AHRI 600. (ClimateMaster, No. 22 at p. 4) ClimateMaster disagreed with DOE's proposal for ''option 2'' to interpolate and extrapolate cooling capacity and total power instead of directly interpolating/extrapolating EER and argued that the method in the draft AHRI 600 at the time should be used, which is based on directly interpolating/extrapolating EER. (*Id.*) ClimateMaster further argued that the difference between the two methodologies is within the uncertainty of measurement for testing WSHPs and, therefore, that DOE's proposed deviation from the methodology in AHRI 600 (at the time) is unnecessary. (*Id.*) ClimateMaster further commented that their analysis of a random sample of performance data for five systems tested in their labs showed that, on average, interpolating/extrapolating based on EER resulted in slightly more accurate numbers than interpolating/extrapolating based on capacity and power. (*Id.* at pp. 4–5)

ClimateMaster recommended that DOE maintain the existing ISO 13256–1:1998 standard until the WSHP industry adopts the updated standard and suggested that DOE adopting a national deviation of ISO 13256–1:2021 would be practical as long manufacturers are given significant time to adopt the new test procedure. (ClimateMaster, No. 22 at p. 5) ClimateMaster commented that there are several changes introduced in ISO 13256–1:2021 that it believes provide a more effective performance map for a

WSHP system, but that this standard has not yet been adopted by the WSHP industry. (*Id.*) ClimateMaster further commented that the EWTs utilized for determining IEER via interpolation/extrapolation are irrelevant as long as DOE requires that the entering air temperatures and other items are inconsistent from the current ISO 13256–1:1998 test program. (*Id.*)

Regarding DOE's request for comment on variable-speed unit testing, ClimateMaster commented that DOE's test results from the units sampled and tested at a third-party lab should be shared with stakeholders for review and comment—particularly regarding variable speed units, as most of these require hardware and software from the manufacturer to allow for proper testing, and test instructions were not provided to DOE for the department's testing of variable-speed units as would be done for normal certification testing. (ClimateMaster, No. 22 at p. 4)

MIAQ commented that the proposed interpolation and extrapolation method should be based on testing at the ISO 13256–1:2021 EWTs. (MIAQ, NO. 23 at p. 4) Regarding the proposed ''option 2'' approach for determining IEER via interpolation/extrapolation for variable-speed units, MIAQ recommended DOE use the latest edition of ISO 13256–1:2021 as the test procedure and continue to use AHRI 340/360–2022 for IEER calculations. (*Id.*)

Other commenters supported DOE's proposals regarding the IEER metric in the August 2022 NOPR. The Joint Commenters supported adopting a part-load metric to measure cooling efficiency performance, stating that WSHPs, like many other commercial air conditioners and heat pumps, operate a significant percent of the time at part-load conditions, and that a part-load metric could incentivize designs that reduce annual energy consumption. (Joint Commenters, No. 27 at pp. 1–2) The Joint Commenters recommended DOE ensure that an adopted part-load metric reflects the total cooling provided divided by the total energy consumed and noted that they have previously commented that the IEER metric likely does not reflect the total cooling provided divided by the total energy consumed, and instead weights efficiencies calculated at different load-points. (*Id.*)

NEEA supported DOE's proposed transition from regulating WSHP efficiency based on a full-load EER metric to a multi-capacity IEER metric. (NEEA, No. 25 at p. 2) NEEA commented that an IEER metric is more representative of overall equipment performance, and that optimizing part-load efficiencies is beneficial to both consumers and utilities because heating/cooling equipment operates at peak capacity for a small number of hours. (*Id.*) NEEA recommended that DOE move to the IEER metric for regulatory purposes while still encouraging manufacturers to also publish full-load EER data, given the importance of EER data for peak load performance and planning for utilities. (*Id.*) NEEA commented that it is encouraged by DOE's monitoring of the development of the AHRI Standard 600 and stated that this standard will allow for even more representative ratings of regional seasonal heating and cooling efficiencies. (*Id.*)

NYSERDA supported DOE's proposal to adopt for WSHPs the testing methods specified in AHRI 340/360–2022 for calculating IEER, stating that a seasonal efficiency metric is more representative of the part-load operation and varying temperature conditions seen in actual field performance of WSHPs. (NYSERDA, No. 21 at p. 2)

As discussed in section III.D, DOE is incorporating by reference AHRI 600–2023 into its amended WSHP test procedure. Section 6.3 of AHRI 600–2023 uses a method for determining IEER that is similar to the interpolation method proposed in the August 2022 NOPR, including tests at three EWTs, interpolating from those EWTs to the IEER EWTs specified in AHRI 340/360–2022, and adjusting the efficiency from the tested and interpolated load percentages to the IEER load percentages.

With regards to ClimateMaster's comment on the interpolation methodology (*i.e.,* interpolating the capacity and power vs. interpolating EER directly), DOE discussed this issue with stakeholders in AHRI 600 meetings after publication of the August 2022 NOPR, and section 6.3.4 of AHRI 600–2023 includes interpolation of capacity and power, consistent with the approach proposed in the August 2022 NOPR.[7] Having been developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, DOE surmises that the interpolation approach specified in AHRI 600–2023 represents the prevailing industry consensus regarding the most appropriate method of performing the interpolation of capacity and power and addresses the issues raised by commenters regarding DOE's proposed methodology for the interpolation method in the August 2022 NOPR.

With regards to the comment from the Joint Commenters recommending that DOE adopt a part-load metric that reflects the total cooling provided divided by the total energy consumed, DOE notes that no industry test procedures for WSHPs include a metric using such an equation format instead of the equation format for IEER (which is a weighted average of EERs at four different EWTs) and the Joint Commenters did not provide sufficient information to support development of such an equation format for WSHPs. Therefore, at this time, DOE has concluded that it lacks the necessary information to adopt an integrated metric other than IEER for WSHPs.

While much of the methodology to determine IEER adopted in this final rule is consistent technically with the proposal from the August 2022 NOPR, DOE notes the following differences between the approach adopted in this final rule (consistent with AHRI 600–2023) and the proposals in the August 2022 NOPR:

(1) *Removal of option for testing directly at IEER EWTs.* In this final rule, DOE is not adopting the proposed option 1 methodology of directly testing at the IEER EWTs (*i.e.,* 85 °F, 73.5 °F, 62 °F, 55 °F). Rather, consistent with section 6.3 of AHRI 600–2023, the test procedure adopted in this final rule specifies that IEER is determined via interpolation from tests at ISO 13256–1 EWTs, which is similar to option 2 as proposed in the August 2022 NOPR. With regards to NYSERDA's comment supporting adopting AHRI 340/360–2022 to calculate IEER, DOE notes that the methodology specified in AHRI 600–2023 is very similar and produces near identical results to the methodology of AHRI 340/360–2022, as demonstrated through DOE's data presented in the August 2022 NOPR. *See* 87 FR 53302, 53316.

(2) *Change in full-load test EWTs.* The full-load test temperatures used for interpolation in section 6.2.1 of AHRI 600–2023 are consistent with ISO 13256–1:2021 (*i.e.,* 86 °F, 68 °F, 50 °F) instead of ISO 13256–1:1998 (*i.e.,* 86 °F, 77 °F, 59 °F), which was proposed in the August 2022 NOPR. This is also consistent with the comment from MIAQ that encouraged the use of ISO 13256–1:2021 EWTs.

(3) *Change in part-load test EWTs.* The part-load test EWTs used for interpolation in section 6.3.2 of AHRI 600–2023 are the same as the full-load EWTs (*i.e.,* 86 °F, 68 °F, 50 °F). This differs from the approach in the August 2022 NOPR, which proposed to align

[7] As discussed later in this section, the lowest EWT in AHRI 600–2023 is 50 °F, which is lower than the lowest IEER EWT (55 °F), such that the AHRI 600–2023 approach does not require extrapolation for determining IEER.

with the EWTs specified in ISO 13256–1:1998 (*i.e.,* 86 °F, 77 °F, and 59 °F for full-load tests; 86 °F, 68 °F, and 59 °F for part-load tests). MIAQ encouraged the use of ISO 13256–1:2021, which specifies part-load test EWTs of 77 °F, 59 °F, and 41 °F. The part-load EWTs in section 6.3.2 of AHRI 600–2023 (86 °F, 68 °F, 50 °F) are not consistent with either the 1998 or 2021 versions of ISO 13256–1, and instead reflect the conclusion of discussions in AHRI 600 committee meetings that conducting part-load tests at the same EWTs as full-load tests would reduce testing burden (by reducing the number of times the water temperature would need to be reconditioned between tests) and better align with the IEER methodology in AHRI 340/360–2022. DOE surmises that the part-load EWTs specified in section 6.3.2 of AHRI 600–2023 represent the prevailing industry consensus regarding the most appropriate EWTs for testing WSHPs. In addition, as compared to the part-load EWTs proposed in the August 2022 NOPR (the lowest of which was 59 °F), the lowest part-load EWT in AHRI 600–2023 (50 °F) is lower than the lowest IEER EWT (55 °F). Therefore, use of the part-load EWTs in AHRI 600–2023 means that all IEER EWTs can be interpolated from the tested EWTs, instead of requiring any extrapolation. As a result, in this final rule DOE is adopting the part-load EWTs as outlined in the AHRI 600–2023 through incorporation by reference.

(4) *Updated provisions for variable speed units.* The approach for determining IEER for variable-speed WSHPs specified in AHRI 600–2023 differs from the approach proposed in the August 2022 NOPR in that additional tests are required at intermediate compressor speeds. Specifically, section 6.3.2 of AHRI 600–2023 requires that three tests be performed at each EWT, at the three following compressor speeds: (1) maximum compressor speed (*i.e.,* full-load test); (2) minimum compressor speed; and (3) an intermediate compressor speed that reflects the compressor stage with a capacity closest to half-way between the capacities measured at the minimum and maximum compressor speeds. This third test reduces the range of compressor speeds over which interpolation must be conducted (*i.e.,* interpolating between intermediate compressor speed and maximum or minimum compressor speeds, instead of between maximum compressor speed and minimum compressor speed), thus reducing the extent to which interpolated results might differ from unit performance at the IEER EWTs. DOE surmises that the approach for variable speed units specified in section 6.3.2 of AHRI 600–2023 represents the prevailing industry consensus regarding the most appropriate method. Therefore, in this final rule, DOE is adopting the IEER determination method for variable-speed units from AHRI 600–2023 through incorporation by reference into appendix C1 of section 6.3.2. Additionally, DOE presumes this updated methodology resolves Climatemaster's request for DOE's variable speed test data, as DOE is adopting the industry consensus methodology.[8]

(5) *Change in cyclic degradation equation.* See section III.E.1.a of this document for detailed discussion.

Finally, DOE is defining ''IEER'' in 10 CFR 431.92 as a weighted average calculation of mechanical cooling EERs determined for four load levels and corresponding rating conditions, expressed in Btu/watt-hour and that IEER is measured per appendix C1 to subpart F of part 431 for water-source heat pumps.

a. Cyclic Degradation

In the August 2022 NOPR, DOE proposed to adopt specific sections of AHRI 340/360–2022 in its amended test procedure for WSHPs, including section 6.2.3.2. 87 FR 53302, 53327. Equation 4 in section 6.2.3.2 of AHRI 340/360–2022 is used to calculate part-load EER for a unit that needs to cycle in order to meet the 75-percent, 50-percent, and/or 25-percent load conditions required for the IEER metric. *Id.* Cycling is the term used to describe the process in which a unit's compressor is repeatedly turned off and on in order to meet a load that is lower than the unit's capacity at its lowest compressor stage. *Id.* Equation 4 of AHRI 340/360–2022 multiplies only the compressor power and condenser section power by the load factor and the coefficient of degradation, while the indoor fan power and controls power are not multiplied by these variables. *Id.* This means that equation 4 of AHRI 340/360–2022 assumes that the indoor fan continues to operate when the compressor cycles off. *Id.*

DOE requested comment on the proposal to adopt the cyclic degradation equation specified in section 6.2.3.2 of AHRI 340/360–2022 for WSHPs, which assumes continuous indoor fan operation when the compressor cycles off. *Id.* at 87 FR 53328.

ClimateMaster commented that the assumption of continuous fan operation in the AHRI 340/360 IEER calculations is neither representative of field operation nor is it in alignment with guidance provided by ASHRAE 90.1. (ClimateMaster, No. 22 at p. 3) ClimateMaster stated that, according to data it collected through consumer surveys, 16 percent of installed systems cycle fan operation with the compressor, 52 percent operate the fan continuously while a building is occupied but cycle the fan with the compressor when unoccupied, and only 14 percent of installed WSHPs run the fan continuously regardless of occupancy and compressor operation, while the remaining 18 percent responded that they were unaware of how their WSHP system cycles operated. (*Id.* at p. 3) ClimateMaster recommended that DOE instead use AHRI 600 method that does not assume continuous fan operation. (*Id.* at p. 8) ClimateMaster commented that, for WSHPs that are installed to operate the fan continuously, models with a multi-speed motor will operate at the cooling fan speed, while variable-speed models have an option to adjust the continuous fan speed to a lower value. (*Id.*)

WaterFurnace commented that supporting ISO 13256 and AHRI 600 would solve the issue. (WaterFurnace, No. 20 at p. 8) WaterFurnace stated that continuous indoor fan operation is not the most appropriate logic in cooling-dominated environments and recommended demand controls ventilation as a better use of energy that improves latent moisture removal. (*Id.*)

In response to these comments, DOE notes that section 6.3.6.4 of AHRI 600–2023 has an equation similar to equation 4 of AHRI 340/360–2022, but the equation in AHRI 600–2023 assumes that the indoor fan stops operating whenever the compressor cycles off. The data provided by ClimateMaster suggest that the vast majority of installed WSHPs do not operate the fan continuously in all operating modes, but that many installed WSHPs do operate the fan continuously during occupied hours (*i.e.,* regardless of whether the compressor is cycled on or off). At the time of publication of the August 2022 NOPR, there were no WSHP industry consensus test procedures that included IEER. However, at this time, DOE surmises that the method in section 6.3.6.4 of AHRI 600–2023, which assumes the fan does not run when the compressor is cycled off, represents

[8] Section 6.3.2.4 of AHRI 600–2023 further specifies that if the continuous capacities of two compressor modulation levels allowed by the controls at a single set of operating conditions are equidistant from the arithmetic mean of the capacities from the minimum and maximum compressor modulation levels at the same set of operating conditions, the intermediate compressor modulation level used for testing is the compressor modulation level with the lower capacity.

industry consensus on the appropriate method for determining IEER for WSHPs. At this time, DOE has concluded that it lacks sufficient information to justify deviating from the approach in AHRI 600–2023 regarding fan operation. DOE is therefore incorporated by reference the cyclic degradation equation from section 6.3.6.4 of AHRI 600–2023 into its amended test procedure in this final rule.

2. ACOP

DOE's current test procedure for WSHPs measures heating-mode performance in terms of the COP metric. COP is a full-load heating efficiency metric for WSHP water-loop applications, meaning that it represents the heating efficiency for a WSHP operating at its maximum capacity at an EWT that is typical of heating operation in water-loop applications. DOE's current test procedure specifies an EWT of 68 °F for measuring COP. 10 CFR 431.96.

In the August 2022 NOPR, DOE discussed its understanding that while in the past water-loop temperatures were maintained at temperatures above 60 °F via heat provided by a system boiler, in current practice WSHP installations are typically controlled to allow water-loop temperatures to drop to temperatures closer to 50 °F. 87 FR 53302, 53316. Therefore, while the current EWT of 68 °F for the COP metric may have been more representative of how WSHP systems were controlled in the past (*i.e.,* with a boiler maintaining water-loop temperatures above 60 °F), DOE tentatively determined in the August 2022 NOPR that the EWT specified for determining COP should be no higher than the lowest EWT used in the IEER metric, which is 55 °F (for the 25-percent load point). *Id.* Therefore, DOE tentatively concluded in the August 2022 NOPR that the COP metric would be more representative of water-loop WSHP applications if based on an EWT of 55 °F. *Id.* at 87 FR 53317. Accordingly, in the August 2022 NOPR, DOE proposed use an EWT of 55 °F for the COP metric in appendix C1. *Id.*

DOE also considered whether an EWT below 55 °F, specifically 50 °F, might be more representative for determining COP, depending upon typical heating conditions for water-loop WSHPs. *Id.* However, DOE noted in the August 2022 NOPR that it lacked data or evidence indicating that 50 °F would be a more representative heating EWT than 55 °F for WSHPs. *Id.*

Additionally, DOE proposed to include an alternate method in appendix C1 that would allow manufacturers to determine COP at the proposed EWT of 55 °F by interpolation from results of testing at the EWTs specified in Table 2 of ISO 13256–1:1998 (*i.e.,* 50 °F and 68 °F). *Id.* In the August 2022 NOPR, DOE presented the results of investigative testing demonstrating that COP calculated from interpolated values of cooling capacity and total power differed from measured COP by an average of less than 1 percent. *Id.* Based on these test results, DOE tentatively concluded that determining COP at 55 °F via interpolation from testing at the ISO 13256–1:1998 EWTs (in accordance with DOE's proposed test procedure) would provide appropriately representative results that are comparable to testing at 55 °F. *Id.*

In summary, DOE proposed in section 6.2 of the proposed appendix C1 to allow that COP for WSHPs can be calculated from either of two methods: (1) ''option A''—testing at 55 °F; or (2) ''option B''—interpolation of heating capacity and power values based on testing in accordance with the proposed test procedure at EWTs of 50 °F and 68 °F. *Id.*

DOE sought comment and data on the representativeness of 55 °F as the EWT condition for determining COP. *Id.* Specifically, DOE requested feedback and data on whether a lower EWT, such as 50 °F, would be more representative of heating operation of WSHPs. *Id.* DOE stated that it would further consider any alternate EWT suggested by comments in developing any final rule. *Id.* DOE also requested comment on the proposal to allow determination of COP using the two different methods. *Id.* Specifically, DOE sought feedback on the proposed method for calculating COP via interpolation and on whether this approach would serve as a potential burden reducing option as compared to testing at 55 °F. *Id.*

In response to the August 2022 NOPR, ClimateMaster recommended that DOE maintain use of the ISO 13256–1:1998 EWT of 68 °F as the basis for the regulated metric, asserting that this would take into account the fact that building designers select and simulate system equipment and performance based upon data published by manufacturers. (ClimateMaster, No. 22 at p. 5) ClimateMaster stated that the EWT used for heating operation in a WSHP is dependent on many factors (*e.g.,* building design, location, system design, system operation, and building occupancy or use) and that, due to these factors, there are no data available to determine the representativeness of 55 °F as the EWT condition in contrast to a lower or higher EWT. (*Id.*)

Regarding DOE's proposal to allow two different options for determining COP, ClimateMaster stated that it disagreed with both proposed options for allowing determination of COP, stating that neither option would provide a reduction in burden considering DOE's proposal to change entering air temperatures. (*Id.*) ClimateMaster further commented that the proposed changes would require the industry to test under multiple standards to meet both certification programs. (*Id.* at pp. 5–6)

MIAQ recommended aligning the EWT conditions with the latest edition of ISO standard EWT conditions. (MIAQ, No. 23 at p. 4)

WaterFurnace commented that non-expansion valve products typically cannot operate below an EWT of 60 °F and that a percentage of the market has always had limited water temperature range capability. (WaterFurnace, No. 20 at p. 7) WaterFurnace also commented that adopting ISO 13256–1 and AHRI 600 would solve the issue of COP test temperature. (*Id.*)

Regarding considerations for selecting the EWT condition for determining COP, FHP commented that the use of higher EWTs is focused on water loop condition only and the move to electrification for commercial buildings will shift commercial designs for water source products toward ground coupled systems, driving temperatures closer to ISO 13256–1 ground loops conditions (*e.g.,* 32 °F entering water). (FHP, No. 26 at p. 4)

NYSERDA agreed with DOE's proposal to adopt an EWT of 55 °F or lower, stating that geothermal technology research and development undertaken by NYSERDA and the Cleaner, Greener Communities Program in Syracuse revealed the average EWT for the average mixed-use building was 48 °F when heating. (NYSERDA, No. 21 at p. 3) NYSERDA commented that it had collected data supporting that the average building consistently uses EWTs of 55 °F or lower and presented these data in a table that suggested the current EWT test condition of 68 °F is unrepresentatively high. (*Id.* at pp. 3–4)

In response to WaterFurnace's comment that some products cannot operate below 60 °F, DOE notes that the heating temperatures in section 6.2.1 of AHRI 600–2023 include temperatures below 60 °F, at 50 °F and 32 °F. Inclusion of these EWTs in the updated industry standard suggests that there is industry agreement that WSHPs can generally operate below 60 °F. DOE is not aware of any WSHPs that cannot operate in heating mode at 50 °F and notes that the issue was not raised in

AHRI 600 committee meetings after the August 2022 NOPR. As discussed earlier in this section, comments from other interested parties also supported the use of a lower temperature.

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023. Section 6.2.1 of AHRI 600–2023 includes EWTs of 68 °F, 50 °F, and 32 °F for measuring COP. Additionally included in section 6.4.5 of AHRI 600–2023 is a new metric, ACOP, which is only measured at 50 °F. This new metric is similar to COP but includes provisions accounting for system pump power, which better accounts for total energy use of WSHPs and aligns with changes made to the cooling efficiency metric (see section III.F.3 of this document for more details). Further, ACOP is included in section 7.1 of AHRI 600–2023 as a minimum requirement for published ratings. Therefore, ACOP, measured at 50 °F, is the heating metric required for WSHPs according to AHRI 600–2023. Having been developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, DOE surmises that ACOP tested at an EWT of 50 °F specified in AHRI 600–2023 represents the prevailing industry consensus regarding the most appropriate metric for measuring heating performance. Therefore, in this final rule, DOE is incorporating by reference sections 6.2.1 and 6.4.5 of AHRI 600–2023 into appendix C1 adopting the ACOP metric, tested at an EWT of 50 °F.

DOE notes that no heating EWT of 55 °F is included in section 6.2.1 of AHRI 600–2023 and, instead, Table 8 of the document maintains the same heating test temperatures as ISO 13256–1:1998 (68 °F, 50 °F, and 32 °F). Therefore, due to the lack of support of a test temperature at 55 °F, the exclusion of that temperature in AHRI 600–2023, and the support for aligning with ISO 13256–1:1998 test temperatures (which include 50 °F), DOE is finalizing the ACOP metric based on a test at 50 °F, consistent with AHRI 600–2023.

As discussed, use of the amended test procedure in appendix C1 and rating to ACOP at 50 °F are not required until the compliance date of amended standards denominated in terms of ACOP, should DOE adopt such standards. DOE is defining ''ACOP'' in 10 CFR 431.92 as the ratio of the heating capacity to the power input, including system pump power, for water-source heat pumps and that ACOP is expressed in watts per watt and determined according to appendix C1 of subpart F of part 431.

Because AHRI 600–2023 requires a heating test at 50 °F, there is no need for an interpolation method to determine ACOP at an EWT different from the tested EWT, and, therefore, AHRI 600–2023 includes no such interpolation method for ACOP. Correspondingly, because DOE is incorporating by reference AHRI 600–2023 into appendix C1 to require a heating test be conducted at 50 °F and to adopt the ACOP metric based on the same EWT, the COP interpolation method proposed in the August 2022 NOPR is no longer applicable. Therefore, DOE is not adopting an interpolation method for determining ACOP in this final rule.

3. Optional Representations

In the August 2022 NOPR, DOE proposed provisions to allow for optional representations of EER conducted per the proposed test procedure (sections 2 through 4 and 7 of proposed appendix C1) at the full-load and part-load EWT conditions specified in Table 1 of ISO 13256–1:1998 (*i.e.,* full load tests at 86 °F, 77 °F, and 59 °F and part-load tests at 86 °F, 68 °F, and 59 °F). 87 FR 53302, 53314. Additionally, DOE proposed provisions to provide for optional representations of COP based on testing conducted per the proposed test procedure (sections 2 through 4 and 7 of proposed appendix C1) at the full-load and part-load EWT conditions specified in Table 2 of ISO 13256–1:1998 (*i.e.,* 68 °F, 50 °F, 41 °F, and 32 °F). *Id.* at 87 FR 53317.

AHRI 600–2023 includes provisions allowing for optional representations of EER and COP in sections 6.3.12 and 6.4.7, respectively. Optional representations can be made at any of the cooling and heating full-load and part-load EWT conditions in Table 8 of AHRI 600–2023. DOE notes that the AHRI 600–2023 includes new metrics applied energy efficiency ratio (''AEER'') and ACOP (see section III.E.2 of this final rule for more details about ACOP). Each of these metrics include a power adder representing system pumps and the adder for AEER also includes cooling tower power. DOE notes that AHRI 600–2023 does not have provisions for optional representations of these metrics and instead requires them to be published. The optional representations of EER and COP allowed for by AHRI 600–2023 do not include the power adder for system pumps and cooling tower power.

As discussed in section III.E.1 and III.E.2 of this final rule, DOE is incorporating by reference AHRI 600–2023 for IEER and ACOP into appendix C1 as the cooling and heating metrics for WSHPs. The IEER metric as determined according to AHRI 600–2023 includes a power adder for system pumps and cooling tower power. DOE notes that the metrics it is adopting are intended to best reflect WSHP performance, using representative EWTs and including power for all components that are needed for operation of WSHP systems in a representative application (*i.e.,* external pumps and cooling towers). Optional representations of EER and COP are intended to provide more information to consumers across a range of temperature conditions such that performance can be assessed for specific applications. DOE is adopting the provisions for optional representations of EER and COP from sections 6.3.12 and 6.4.7 from AHRI 600–2023 by incorporating by reference AHRI 600–2023 into appendix C1. These provisions allow optional representations to be made consistent with AHRI 600–2023 at full-load or part-load at any of the standard rating conditions for WSHPs (*i.e.,* 86 °F, 68 °F, and 50 °F for cooling and 68 °F, 50 °F, and 32 °F for heating). DOE notes that these temperatures vary slightly from the proposals in the August 2022 NOPR for optional representations, but represent the same intent of allowing for optional representations of a range of operating conditions. Having been developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, DOE has determined that the EWTs specified in AHRI 600–2023 represent the prevailing industry consensus regarding the most appropriate EWTs for optional performance test points.

4. Entering Air Conditions

The current DOE WSHP test procedure references ISO 13256–1:1998, which specifies in Table 1 that EER is measured with entering air at 27 °C (80.6 °F) dry-bulb temperature and 19 °C (66.2 °F) wet-bulb temperature and in Table 2 that COP is measured with entering air at 20 °C (68 °F) dry-bulb temperature and 15 °C (59 °F) wet-bulb temperature.

In the August 2022 NOPR, DOE proposed to use the entering air conditions in Table 6 of AHRI 340/360–2022, which specify that cooling tests are measured with entering air at 80 °F dry-bulb temperature and 67 °F wet-bulb temperature heating tests are measured with entering air at 70 °F dry-bulb temperature and a maximum of 60 °F wet-bulb temperature. 87 FR 53302, 53318. DOE discussed in the August 2022 NOPR that the entering air conditions specified in AHRI 340/360–2022 are similar to the conditions specified in ISO 13256–1:1998 and ISO 13256–1:2021, differing for cooling by

0.6 °F for dry-bulb temperature and 0.8 °F for wet-bulb temperature and for heating by 2 °F for dry-bulb temperature and 1 °F for wet-bulb temperature. *Id.* DOE surmised that these differences are likely due to the conditions in ISO 13256–1 (1998 and 2021 versions) being specified in terms of degrees Celsius, whereas the conditions in AHRI 340/360–2022 are specified in degrees Fahrenheit. *Id.* DOE also noted that the entering air conditions specified in AHRI 340/360–2022 are the same as in previous versions of AHRI 340/360, including AHRI 340/360–2007, which is referenced in the current DOE test procedure for CUAC/HP equipment. *Id.* Further, the most common application for WSHPs (and the application DOE understands that the WSHP industry is intending to represent via use of the IEER metric in AHRI 600) is commercial buildings, similar to CUAC/HP equipment. *Id.* Therefore, DOE tentatively determined in the August 2022 NOPR that the entering air conditions in AHRI 340/360–2022 are appropriately representative of the average conditions in which WSHPs operate in the field. *Id.*

DOE requested comment on its proposal to specify use of the cooling entering air conditions from AHRI 340/360–2022 (*i.e.,* 80 °F dry-bulb temperature and 67 °F wet-bulb temperature) and the heating entering air conditions from AHRI 340/360–2022 (*i.e.,* 70 °F dry-bulb temperature and a maximum of 60 °F wet-bulb temperature). *Id.*

In response to the August 2022 NOPR, ClimateMaster recommended that DOE keep the existing entering air temperature conditions for both heating and cooling tests from ISO 13256–1:1998 to avoid the requirement to test equipment under two separate certification programs. (ClimateMaster, No. 22 at p. 6) ClimateMaster stated that the use of 80.6 °F and 66.2 °F entering air conditions for cooling would be more conservative (*i.e.,* result in lower efficiency ratings) than those at 80 °F and 67 °F as specified in AHRI 340/360–2022. (*Id.*)

WaterFurnace commented that adopting ISO 13256 and AHRI 600 would solve the issue of which entering air conditions to use. (WaterFurnace, No. 20 at p. 7) WaterFurnace further commented that DOE's proposal would essentially require all new testing due to the different entering air conditions. (*Id.*) WaterFurnace stated that the existing entering air conditions of AHRI/ISO 13256 could be used and would result in a more conservative performance prediction. (*Id.*)

MIAQ commented that it generally agrees with DOE's proposal to adopt the entering air conditions in AHRI 340/360–2022. (MIAQ, No. 23 at p. 5)

As discussed, DOE is adopting provisions for determining IEER and ACOP by incorporating by reference AHRI 600–2023 into appendix C1. The entering air conditions in section 6.2.1 of AHRI 600–2023 align with the entering air conditions specified in AHRI 340/360–2022 (and therefore align with DOE's August 2022 NOPR proposal). DOE surmises that inclusion of the AHRI 340/360–2022 entering air conditions in AHRI 600–2023 indicates industry consensus with these test conditions. Therefore, DOE is adopting provisions for determining IEER and ACOP consistent with AHRI 600–2023, including entering air conditions of 80 °F dry bulb and 67 °F wet bulb for cooling tests and 70 °F dry bulb and a maximum of 60 °F wet bulb for heating tests, in this final rule, by incorporating by reference into appendix C1 section 6.2.1 of AHRI 600–2023.

F. Test Method

1. Airflow and External Static Pressure

a. Fan Power Adjustment and Required Air External Static Pressures

For ducted units, the current DOE WSHP test procedure, which incorporates by reference ISO 13256–1:1998, specifies a fan power adjustment calculation that does not account for fan power used for overcoming external resistance. As a result, the calculation of efficiency includes only the fan power required to overcome the internal resistance of the unit. In addition, ISO 13256–1:1998 does not specify ESP requirements for ducted equipment, instead allowing manufacturers to specify a rated ESP. In the August 2022 NOPR, DOE proposed provisions to reflect fan power to overcome a representative ESP when calculating efficiency for ducted units to account for the impacts of ESP typically encountered in the field. 87 FR 53302, 53321. DOE determined that, to best reflect field operation, ducted WSHPs should be tested with minimum ESPs, the power for overcoming ESP should be included in efficiency calculations, and all equipment should be tested with an ESP upper tolerance. *Id.* DOE determined that the method in AHRI 340/360–2022 is more representative of field energy use than the methods used in ISO 13256–1:1998 for WSHPs. *Id.* DOE proposed to adopt AHRI 340/360–2022 for WSHPs, including section 6.1.3.3 and Table 7 of AHRI 340/360–2022, which specify minimum ESPs for ducted units, a tolerance on ESP of −0.00/+0.05 in H_2O, and no fan power adjustment. *Id.* DOE requested comment on the proposal to adopt provisions from AHRI 340/360–2022 such that for ducted units testing would be conducted within tolerance of the AHRI 340/360–2022 minimum ESP requirements, and efficiency ratings would include the fan power measured to overcome the tested ESP. *Id.* at 87 FR 53322.

In response to the August 2022 NOPR, ClimateMaster recommended that DOE keep the existing ISO 13256–1:1998 standard and develop an IEER rating per AHRI 600 that offers provisions for complying with the required minimum external pressure as given in AHRI 340/360–2022. (ClimateMaster, No. 22 at p. 6) ClimateMaster stated that there are multiple reasons why the current ISO 13256–1:1998 standard excludes external static pressure, including that the methodology was created to rate different motor options for varying static requirements in the market space, which is especially problematic with non-variable speed motors as they are limited in output capability over a narrow static range. (*Id.*) MIAQ recommended DOE reference the ESP requirements in the latest edition of ISO 13256–1. (MIAQ, No. 23 at p. 5) WaterFurnace commented that supporting ISO 13256 and AHRI 600 would solve the issue and that it believes the required information can be calculated from AHRI/ISO 13256 data without retesting. (WaterFurnace, No. 20 at p. 7) WaterFurnace additionally commented that the minimum ESP requirements specified in AHRI 340/360 are adequate for most commercial WSHPs because most are installed with common plenum returns with little to no return ductwork. (*Id.*)

FHP recommended that instead of requiring testing at minimum ESP requirements, DOE develop a revised fan power adjustment that incorporates accurate fan efficiencies and allows testing at a range of ESPs but adjusts fan performance to reflect performance at the minimum ESPs specified in AHRI 340/360–2022. (FHP, No. 26 at pp. 3–4) FHP asserted that such a revised fan power adjustment would allow for variations in tested ESP to achieve rated airflow to account for limitations of the fan-motor combination and variation in manufacturing tolerances, while still ensuring ratings are based on an ESP more representative than zero ESP. (*Id.*)

The Joint Commenters supported DOE's proposal that WSHPs be tested at the ESPs specified in the proposed test procedure. (Joint Commenters, No. 27 at p. 2) The Joint Commenters stated that maintaining the current test procedure,

which applies a correction factor that adjusts fan power measured at the manufacturer-specified ESP is adjusted down to reflect fan power at zero ESP and incentivizes testing with higher-than-representative ESPs, would be inconsistent with the recommendation in the ASRAC Fans and Blowers Working Group term sheet to capture fan energy more fully across commercial HVAC product categories. (*Id.*)

NEEA supported DOE's proposal to include additional fan energy in the WSHP efficiency metric, but also encouraged DOE to consider increasing the proposed ESP requirements to be more representative of current industry practice. (NEEA, No. 25 at pp. 2–3) NEEA stated that during the 2015 CUAC/HP energy conservation standard ASRAC negotiations, DOE's energy use analysis used ESP values 2 to 3 times higher than the ESP requirements in the current test procedure because DOE found the values to be more realistic and representative of field conditions. (*Id.* at p. 3) NEEA further recommended that DOE consider aligning WSHP ESP requirements with the updated CUAC/HP ESP requirements when they are finalized by the ASRAC Working Group. (*Id.*)

With regards to these comments, DOE notes that section 5.5.1 of AHRI 600–2023 includes ESPs to be used for testing for ducted units. The ESPs are equivalent to those outlined in AHRI 340/360–2022 for units less than 75,000 Btu/h cooling capacity, but the ESPs for units above 75,000 Btu/h cooling capacity (*i.e.,* 0.75 in. H_2O for units from 75,000 Btu/h to 134,000 Btu/h; 1.00 in. H_2O for units from 135,000 Btu/h to 280,000 Btu/h; and 1.50 in. H_2O for units greater than 280,000 Btu/h) are significantly higher than those in AHRI 340/360–2022 and align with the ESP requirements recommended in the ACUAC and ACUHP Working Group TP Term Sheet. (See Document No. 65 in Docket No. EERE–2022–BT–STD–0015) Section 5.7 of AHRI 600–2023 also includes a tolerance of ESP of −0.00/+0.05 in H_2O and sections 6.3 and 6.4 of AHRI 600–2023 include no fan power adjustment. DOE notes also that the approach set forth in AHRI 600–2023 is mostly consistent with the approach proposed in the August 2022 NOPR, with the only difference being higher ESP requirements for units greater than 75,000 Btu/h in cooling capacity. DOE has determined that the inclusion of ESP requirements, an ESP tolerance, and no fan power adjustment in AHRI 600–2023 represents industry consensus that these provisions provide the most appropriate and representative method for testing WSHPs. As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1, including these ESP provisions. DOE notes that including these provisions is consistent with commenters' suggestions to adopt AHRI 600.

Regarding the higher ESP requirements for units with a cooling capacity greater than 75,000 Btu/h, adopting these values is consistent with NEEA's recommendation to align with the recommendations from the ASRAC Working Group for test procedures for CUAC/HPs. These ESP requirements were developed as part of a joint effort between manufacturers, efficiency advocates, utilities, and DOE to create a more representative efficiency metric for CUACs/HPs. DOE understands that WSHPs greater than 75,000 Btu/h are installed in similar applications to CUACs/HPs and, as such, DOE finds the AHRI 600–2023 ESP requirements to be representative for WSHPs with a cooling capacity greater than 75,000 Btu/h.

DOE notes that the ACUAC and ACUHP Working Group TP Term Sheet recommends an ESP requirement of 0.75 in. H_2O for units with a cooling capacity between 65,000 to 135,000 Btu/h, while the lower capacity limit for this requirement in section 5.5.1 of AHRI 600–2023 is 75,000 Btu/h. Based on discussions in AHRI 600 committee meetings, DOE understands that there are WSHP model lines that span up to 6 tons that typically use fan/motor combinations that are designed for lower ESP applications and cannot operate at the rated airflow at an ESP as high as 0.75 in. H_2O. Therefore, AHRI 600–2023 specifies a lower capacity limit for this ESP requirement of 75,000 Btu/h rather than 65,000 Btu/h so that these 6-ton models are tested with a more representative ESP. DOE understands this issue to be unique to WSHPs and does not apply to ACUACs and ACUHPs, for which models with a cooling capacity between 65,000 Btu/h and 75,000 Btu/h typically have different designs than three-phase ACUACs and ACUHPs (which typically have comparable designs to CAC/HPs) and are typically designed for installations for which an ESP of 0.75 in. H_2O is representative. Therefore, in this final rule, DOE is incorporating by reference the requirements specified in Table 7 of section 5.5.1 of AHRI 600–2023 for all WSHPs with a cooling capacity less than 760,000 Btu/h.

With regard to comments from ClimateMaster and FHP expressing concern over ability of different fan/motor combinations to test at an ESP requirement at the rated airflow, DOE notes that this issue is addressed by the provisions for (1) non-standard high-static indoor fan motors and fan/motor combinations proposed in the August 2022 NOPR, included in section D4 of AHRI 600–2023 (discussed in section III.G.3 of this final rule); and (2) non-standard low-static motors included in sections 3.2.30 and 5.7.4.3 of AHRI 600–2023 (discussed in section III.F.12 of this final rule). DOE has concluded that the inclusion of ESP requirements and provisions in AHRI 600–2023 for (1) non-standard high-static indoor fan motors and fan/motor combinations and (2) non-standard low-static motors reflect industry consensus that these provisions provide an appropriate method for testing and rating WSHPs.

DOE notes that section 5.5.1.2 of AHRI 600–2023 specifies a minimum ESP of 0.5 in. H_2O for residential representations, but that the residential representations have not yet been fully developed for WSHPs (see section III.A.2 of this document for more details). DOE will continue to work with AHRI 600 committee to develop provisions for determining such ratings.

b. Setting Airflow and ESP

DOE's current WSHP test procedure does not include provisions on how to simultaneously set airflow and ESP because there are no required ESPs for testing. Because DOE proposed to include minimum ESPs in its test procedure in the August 2022 NOPR, it also proposed provisions to address how to simultaneously set airflow and ESP. 87 FR 53302, 53322–53324. The proposals were broken into three groups:

(1) For ducted units with continuously variable speed fans, DOE proposed to use relevant provisions from AHRI 340/360–2022 in sections 6.1.3.3 through 6.1.3.5.

(2) For ducted units with discrete step fans, DOE proposed instructions for setting the fan speed in the scenario in which: (1) tolerances for airflow and ESP could not be met simultaneously, and (2) adjacent fan control settings result in airflow or ESP too low at the lower fan control setting and too high at the higher fan control setting.

(3) For non-ducted units, DOE proposed units to be tested with a target ESP of 0.00 in H_2O within a tolerance of −0.00/+0.05 in H_2O.

Id.

For all three types of units, the proposed airflow tolerance was 3 percent. *Id.*

DOE requested comment on the proposed adoption of provisions from AHRI 340/360–2022 for setting airflow and ESP for testing WSHP units with

continuously variable speed fans. *Id.* at 87 FR 53323. DOE also requested comment on its proposed instructions (distinct from provisions in AHRI 340/360–2022) for setting airflow and ESP for ducted WSHP units with discrete-step fans. *Id.* Finally, DOE requested comment on its proposal for setting airflow and ESP for non-ducted WSHP units. *Id.* at 87 FR 53324.

In response to the August 2022 NOPR, ClimateMaster recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that adopts the applicable parts of AHRI 340/360 for fully variable-speed motor systems and systems with adjustable sheaves, while still providing separate provisions for setting airflow for fan motor systems that are not continuously variable. (ClimateMaster, No. 22 at p. 7) ClimateMaster stated that it disagrees with the use of AHRI 340/360–2022 for all indoor blower systems, arguing that these provisions were developed to accommodate only continuously variable-speed blower systems and asserted that the proposed 3 percent tolerance would not be feasible for larger WSHP systems without continuously variable motors or WSHPs with discrete-step or constant volume fan motors. (*Id.* at p. 6) ClimateMaster stated that Table B1 of the AHRI WSHP Operations Manual [9] specifies a 5 percent airflow tolerance for discrete-step motors. (*Id.* at p. 7) ClimateMaster further commented that the provisions for setting airflow in AHRI 210/240–2023 are more appropriate for the fan motors utilized in most WSHP systems (*i.e.,* not continuously variable), stating that the AHRI 210/240–2023 provisions use manufacturer-specified fan motor settings and allow airflow to decrease to 10 percent below the target airflow. (*Id.* at p. 7)

FHP commented that the combination of a minimum ESP requirement and a 3 percent airflow tolerance would require additional testing and significant design constraints and changes at the component level for WSHPs with direct-drive motors and questioned whether a 3 percent airflow tolerance at a minimum ESP requirement is technologically feasible. (FHP, No. 26 at p. 4) FHP further commented that units with constant-torque direct-drive fan motors (*e.g.,* permanent split capacitor (''PSC'') motors, electrically commutated motors (''ECMs'')) do not allow for adjustments to airflow without adjustments to ESP, making it difficult to consistently hit the airflow target within 3 percent. (*Id.*) FHP also noted that the AHRI WSHP Operations Manual allows for adjustments to ESP to meet a 5-percent airflow tolerance for these systems. (*Id.*)

WaterFurnace commented that adopting ISO 13256 and AHRI 600 would solve the issue. (WaterFurnace, No. 20 at p. 8) WaterFurnace stated that a test procedure for models fans with ECMs would have to be added to AHRI 340/360 because the standard does not address setting airflow and ESP for such models, which it stated are typical for smaller WSHPs. (*Id.*) MIAQ recommended DOE reference the latest edition of ISO 13256–1, stating that this standard is the industry test procedure currently used by manufacturers and laboratories for WSHP testing. (MIAQ, No. 23 at p. 5)

ClimateMaster stated that the WSHP Operations Manual covers available provisions with what they consider to be a proper allowance for airflow variation and that non-ducted WSHPs are available with motors that have multiple set speeds either through software or by utilizing a tapped motor winding. (ClimateMaster, No. 22 at p. 7) ClimateMaster stated that these provisions are slightly different from those proposed in the August 2022 NOPR and requested further clarification to the meaning of ''as close as possible''. (*Id.*) ClimateMaster noted that they expect that the speed tap specified by the manufacturer would be utilized and that, if this is the case, then there should not be any concern if the airflow is ''as close as possible'' to the rated point. (*Id.*)

In response to the comment from ClimateMaster, DOE notes that the ''as close to the target as possible'' language in the August 2022 NOPR is used in situations when the airflow and ESP requirements cannot be simultaneously met. Specifically, for non-ducted units, the August 2022 NOPR provisions specify that if airflow and ESP requirements cannot be met simultaneously, the ESP requirement takes precedence (*i.e.,* ESP must be maintained within tolerance) and the airflow is maintained as close as possible to the target airflow (but outside of tolerance). Section 5.8 of AHRI 600–2023 similarly specifies that in this situation the ESP must be maintained within tolerance and that there is no condition tolerance for airflow.

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes sections 5.7 and 5.8 of AHRI 600–2023. This language includes provisions generally consistent with provisions outlined in the August 2022 NOPR, specifically a tolerance of 3 percent for setting airflow, separate provisions for continuously variable speed fans and discrete-step fans, and a method for non-ducted units. Section 5.7 of AHRI 600–2023 also includes provisions for setting airflow and ESP for constant-volume fans, but DOE notes that these provisions were not proposed in the August 2022 NOPR and are consistent with provisions in appendix M1 for central air conditioners and heat pumps.

Regarding commenter's concerns about models with non-continuously-variable fan motors, the comments received suggest that the commenters interpreted DOE's proposal to be adopting the provisions for setting airflow and ESP in AHRI 340/360–2022 without modification. However, as discussed in the August 2022 NOPR, DOE proposed additional provisions to allow a larger airflow tolerance for models with non-continuously-variable fan motors that align more closely with the provisions for setting airflow in AHRI 210/240–2023 (as recommended by ClimateMaster). *See* 87 FR 53302, 53323. Similar provisions are included in AHRI 600–2023. DOE has concluded that these provisions, along with the previously mentioned provisions for constant-volume fans, provide an appropriate method for setting airflow and ESP for WSHPs of all fan motor types.

DOE has determined that incorporating by reference AHRI 600–2023 for setting airflow and ESP addresses commenters' concerns. DOE surmises that the inclusion of these provisions for setting airflow and ESP in AHRI 600–2023 indicates industry consensus that these provisions provide an appropriate method for testing WSHPs. Therefore, in this final rule, DOE is incorporating by reference into appendix C1 sections 5.7 and 5.8 of AHRI 600–2023 for setting airflow and ESP.

c. Coil-Only Units

For units without integral fans (*i.e.,* coil-only units), section 4.1.3.1 of ISO 13256–1:1998, which is referenced in the current DOE WSHP test procedure, specifies that a fan power adjustment be added to the total power of the unit, and that this value be added to the heating capacity and subtracted from the cooling capacity. The fan power adjustment equation to determine fan power estimates fan power to overcome internal pressure drop within the unit, using a similar methodology to the fan power adjustment equation used for

[9] DOE notes that the AHRI WSHP Certification Operations Manual is available at: *https://www.ahrinet.org/sites/default/files/2022-06/WSHP_OM.pdf* (Last accessed April 25, 2023).

units with integral fans to subtract out the fan power to overcome ESP. As discussed in section III.F.1.a of this final rule, the amended test procedure adopted in appendix C1 (incorporating by reference AHRI 600–2023) does not use a fan power adjustment for units with integral fans and requires testing at representative minimum external static pressures and ratings reflect performance at the tested ESP.

As part of DOE's proposal to adopt AHRI 340/360–2022, in the August 2022 NOPR, DOE proposed to adopt sections 6.1.1.6, 6.1.3.3 and 6.1.3.4 of AHRI 340/360–2022, which contain provisions for how to test coil-only units. 87 FR 53302, 53322. In particular, section 6.1.3.3.4 specifies that coil-only units shall not have a pressure drop exceeding 0.30 in H_2O for the full load cooling test. Section 6.1.3.4.6 outlines that coil-only units are to be tested at manufacturer specified airflow rates, not exceeding 450 standard cubic feet per minute (''scfm'') per ton of cooling capacity and if there is no manufacturer specified airflow rate, they are to be tested at 400 scfm per ton of rated cooling capacity. Finally, section 6.1.1.6 specifies that 1,250 Btu/h per 1,000 scfm is to be removed from the measured cooling capacity and 365 Watts (''W'') per 1,000 scfm is to be added to the measured power for ducted coil-only units.

AHRI 600–2023 includes provisions for coil-only units, which are defined as units without an indoor fan or separate designated air mover. The provisions are nearly identical to those proposed in the August 2022 NOPR. Section 5.5.2 specifies that coil-only units shall not have a pressure drop exceeding 0.30 in H_2O for the full-load cooling test. Section 5.6.3 outlines that coil-only units are to be tested at manufacturer specified airflow rates, not exceeding 450 scfm per ton of cooling capacity and if there is no manufacturer specified airflow rate, they are to be tested at 400 scfm per ton of rated cooling capacity. Finally, sections 6.3.3.4 and 6.4.3.4 specify that for ducted coil-only units, measured capacity is adjusted by 1,245 Btu/h per 1,000 scfm (subtracted from cooling capacity and added to heating capacity) and measured power is adjusted by adding 365 W per 1,000 scfm. Additionally, AHRI 600–2023 includes provisions for non-ducted coil only units—for these, the values are 940 Btu/h per 1,000 scfm for capacity adjustment and 275 W per 1,000 scfm for power adder respectively.

DOE notes that the provisions outlined in AHRI 600–2023 are consistent with those proposed in the August 2022 NOPR except for a minor deviation in the capacity reduction for ducted coil-only units and the inclusion of provisions for non-ducted coil-only units. Based on discussion in AHRI 600 committee meetings, DOE understands that non-ducted coil-only WSHP models exist on the market, and therefore, DOE has determined that the addition of provisions for testing such units is warranted. As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes section 5.5.2, 5.6.3, and 6.3.3.4 of AHRI 600–2023. DOE notes the inclusion of these provisions in AHRI 600–2023 indicates industry consensus with these provisions and provides an appropriate method for testing coil-only WSHPs. Therefore, DOE is incorporating by reference into appendix C1 the provisions for coil-only units from AHRI 600–2023 in this final rule.

2. Capacity Measurement

The current DOE WSHP test procedure, through adoption of section 6.1 of ISO 13256–1:1998, specifies that total cooling and heating capacities are to be determined by averaging the results obtained using two test methods: the liquid enthalpy test method for the liquid side tests and the indoor air enthalpy test method for the air side tests. 10 CFR 431.96. For non-ducted equipment, section 6.1 of ISO 13256–1:1998 includes an option for conducting the air-side tests using the calorimeter room test method instead of the air enthalpy test method. Section 6.1 of ISO 13256–1:1998 also specifies that, for a test to be valid, the results obtained by the two methods used must agree within 5 percent. ANSI/ASHRAE 37–2009 is similar to the test method in ISO 13256–1:1998. ANSI/ASHRAE 37–2009 requires two capacity measurements for units with cooling capacity less than 135,000 Btu/h; the first method of measurement (*i.e.,* the primary method) is used as the determination of the unit's capacity, while the second measurement (*i.e.,* the secondary method) is used to confirm rather than to be averaged with the primary measurement (*see* section 10.1 and Table 1 of ANSI/ASHRAE 37–2009).

In the August 2022 NOPR, DOE proposed to adopt specific sections of AHRI 340/360–2022 for use in the WSHP test procedure, including section E6, which specifies test methods for capacity measurement. 87 FR 53302, 53325–53327. Section E6.1 of AHRI 340/360–2022 requires use of the indoor air enthalpy method specified in section 7.3 of ANSI/ASHRAE 37–2009 as the primary method for capacity measurement. This is the measurement used to determine capacity, as required in section 10.1.2 of ANSI/ASHRAE 37–2009. Section E6.2.2 of AHRI 340/360–2022 requires use of one of the applicable ''Group B'' methods specified in Table 1 of ANSI/ASHRAE 37–2009 as a secondary method for capacity measurement. The group B methods that are applicable to WSHPs are the outdoor liquid coil method (similar to the liquid enthalpy method included in the 1998 and 2021 versions of ISO 13256–1), the refrigerant enthalpy method, and the compressor calibration method. Section E6.4.2 of AHRI 340/360–2022 requires that the primary and secondary measurements match for full-load cooling and heating tests, within 6 percent of the primary measurement. No match is required between primary and secondary measurements for part-load cooling tests. DOE proposed to adopt all of these provisions by incorporating by reference AHRI 340/360–2022. *Id.* at 87 FR 53325. DOE requested comment on this approach to adopt the provisions in AHRI 340/360–2022 and ANSI/ASHRAE 37–2009 regarding primary and secondary capacity measurements. *Id.* at 87 FR 53326.

In response to the August 2022 NOPR, ClimateMaster commented that it agrees with the intent of DOE's proposed approach but disagrees with some specifics and recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that adopts the provisions of ANSI/ASHRAE 37–2009 for primary and secondary capacity measurements, with certain modifications. (ClimateMaster, No. 22 at pp. 7–8) ClimateMaster commented additionally that it disagrees with the provisions in AHRI 340/360–2022 that only require agreement between the primary and secondary capacity measurements for full-load tests. (*Id.* at p. 8) ClimateMaster noted that the current ISO standard allows for a 5 percent tolerance between the two measurements, and that in its internal testing ClimateMaster strives for agreement within 3–4 percent, stating that anything over that limit indicates an issue in equipment setup and/or the measurement system. (*Id.*) ClimateMaster commented that neglecting to include a match requirement for part-load tests could lead to inaccurate representations of system performance. (*Id.*)

ClimateMaster further commented that the uncertainty of measurement for the liquid coil method is lower than for the indoor air enthalpy method, and that the WSHP industry considers the liquid coil method to be the more accurate measurement method. (*Id.*) ClimateMaster also stated that the liquid coil method does not include the

limitations regarding refrigerant subcooling that are specified for the refrigerant enthalpy method (in section 7.5.1.3 of ANSI/ASHRAE 37–2009), and stated that low values of refrigerant subcooling are typically seen in part-load tests. (*Id.*) ClimateMaster commented that it disagrees with section 7.6.1.2 of ANSI/ASHRAE 37–2009 because this provision specifies that the outdoor liquid coil method cannot be used for outdoor compressor systems, and therefore makes the refrigerant enthalpy method necessary as the secondary capacity measurement method for such systems. (*Id.*) ClimateMaster stated that while it agrees in theory that the compressor and associated refrigerant lines will lose heat when an uninsulated compressor section is installed outdoors, requiring the use of the refrigerant enthalpy method is not representative of installed outdoor compressor systems because for testing the outdoor section of a split WSHP system is installed in the same psychrometric room as the indoor air handler. (*Id.*) ClimateMaster added that there are currently no specified outdoor conditions or requirements for placement of the outdoor unit in a differently conditioned room and that the difference between the current liquid coil method and the proposed refrigerant enthalpy method is negligible without specifying conditions more thoroughly. (*Id.*) ClimateMaster further commented that the insulation requirements in ANSI/ASHRAE 37–2009 only specify 1 inch of fiberglass insulation and do not specify a minimum R-value for the insulation. (*Id.*)

In summary, ClimateMaster recommended that DOE adopt the indoor air enthalpy method for the primary capacity measurement, and that the outdoor coil liquid method be used for the secondary capacity measurement if the unit either (1) meets the requirements of section 7.6.1.2 of ANSI/ASHRAE 37–2009 using fiberglass insulation or an equivalent material with an R-value of 8.0, or (2) is an outdoor unit installed in the same test chamber as the indoor coil. (*Id.*) ClimateMaster further recommended a requirement for agreement within 5 percent between primary and secondary capacity measurements for full-load and part-load tests. (*Id.*)

MIAQ commented that DOE's proposed approach in the August 2022 NOPR of adopting the provisions in AHRI 340/360 and ANSI/ASHRAE 37–2009 regarding primary and secondary capacity measurements deviates from the industry test procedure ISO 13256–1 and therefore will require manufactures to retest their products, resulting in increased burden. (MIAQ, No. 23 at p. 6)

WaterFurnace commented that adopting ISO 13256 and AHRI 600 would solve the issue and that the liquid enthalpy test method is widely accepted as the most accurate method for capacity measurement for WSHPs. (WaterFurnace, No. 20 at p. 8)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into Appendix C1, including provisions in Section 5.2 of AHRI 600–2023 regarding primary and secondary capacity measurement methods. Specifically, Section 5.2 states that the indoor air enthalpy method be used as the primary measurement of capacity, and that secondary capacity measurements be conducting using one of the following methods: outdoor liquid coil method, refrigerant enthalpy method, or compressor calibration method. Section 5.2.2 of AHRI 600–2023 also states that, when using the outdoor liquid coil method, the secondary measurement must agree within 6 percent of the primary measurement of capacity on all tests, including part-load tests. Incorporating by reference this language addresses comments in response to the August 2022 NOPR that DOE should adopt AHRI 600. The provisions in AHRI 600–2023 also address ClimateMaster's concerns about not having a match for part-load tests because AHRI 600–2023 does require a match between primary and secondary capacity measurements for part-load tests if the outdoor liquid coil method is used.

Regarding agreement between primary and secondary measurements, DOE has concluded that the requirement in AHRI 600–2023 that secondary capacity measurements agree within 6 percent of primary capacity measurements (consistent with AHRI 340/360–2022, which DOE proposed to reference in the August 2022 NOPR) provides a representative measure of efficiency for WSHPs.

Regarding ClimateMaster's concerns about the outdoor liquid coil method provisions in ANSI/ASHRAE 37–2009, DOE notes that section 5.2.2.1.1 of AHRI 600–2023 specifies to follow all requirements in section 7.6 of ANSI/ASHRAE 37–2009 when using the outdoor liquid coil method and does not include any provisions that deviate from ANSI/ASHRAE 37–2009 with regard to outdoor compressor systems or insulation R-value. Regarding ClimateMaster's concern that ANSI/ASHRAE 37–2009 requires use of the refrigerant enthalpy method for secondary capacity measurements for systems in which the compressor is located outdoors, DOE further notes that for a split system WSHP with the compressor and liquid coil contained in the outdoor unit intended for outdoor installation, shell losses from the compressor could impact capacity measurements using the outdoor liquid coil method but would not impact capacity measurements using the refrigerant enthalpy method. Therefore, at this time, DOE does not have sufficient evidence or justification to deviate from the provisions in AHRI 600–2023 regarding the outdoor liquid coil method and has concluded that these provisions provide for appropriate and representative measurements of efficiency for WSHPs.

Additionally, AHRI 600–2023 was developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, and DOE surmises that the capacity measurement approach specified in section 5.2 of AHRI 600–2023 sufficiently addresses the concerns raised in comments to the August 2022 NOPR. Consequently, DOE is incorporating by reference into appendix C1 section 5.2 of AHRI 600–2023 regarding primary and secondary capacity measurements in this final rule.

3. Pump Power Adjustment and Liquid External Static Pressure

ISO 13256–1:1998 does not reflect the pump power needed to overcome liquid ESP from the water loop that pipes water to and from the WSHP. Instead, section 4.1.4 of ISO 13256–1:1998 includes a pump power adjustment (which assumes a pump efficiency of 0.3 for all units) to be applied such that only the pump power required to overcome the liquid internal static pressure of the unit is included in calculation of efficiency ratings. ISO 13256–1:1998 also does not specify any liquid ESP requirements for testing. The exclusion of pump power to overcome ESP from system water loop piping in ISO 13256–1:1998 ratings results in higher efficiency ratings than would be measured if ratings reflected pump power to overcome ESP. ISO 13256–1:1998 also does not specify a minimum liquid ESP during testing for units with integral pumps. For units without integral pumps, the pump power adjustment in ISO 13256–1:1998 estimates pump power at zero liquid external static pressure.

As discussed previously, ISO 13256–1:1998 was updated. However, the pump power and liquid ESP provisions in sections 5.1.4 and 5.1.6 of ISO

13256–1:2021 are the same as those in sections 4.1.4 and 4.1.6 of ISO 13256–1:1998.

In the August 2022 NOPR, DOE proposed to adopt provisions for WSHPs in appendix C1 that align with the recently adopted provisions for water-source dedicated outdoor air systems (''DOASes''). 87 FR 53302, 53328–53329. The proposed provisions would require that all WSHPs with an integral pump be tested with a liquid ESP of 20 ft of water column, with a −0/+1 ft condition tolerance and a 1 ft operating tolerance. *Id.* at 87 FR 53328. For units without integral pumps, DOE proposed to require that a ''total pumping effect'' (calculated using the same equation as in section 6.1.6.4 of AHRI 920–2020) be added to the unit's measured power to account for the pump power to overcome the internal static pressure of the unit and a liquid ESP of 20 ft of water column. *Id.* at 87 FR 53328–53329. Further, DOE proposed to require that the measured pump power or the pump effect addition, as applicable, be included in the condenser section power for units of all capacities when performing cyclic degradation during calculation of IEER. *Id.* at 87 FR 53329. DOE requested commented on the proposed provisions to account for pump power to overcome both internal pressure drop and a representative level of liquid ESP for WSHPs with and without integral pumps. *Id.* DOE specifically requested comment on the representativeness of 20 ft of water column as the liquid ESP for WSHPs. *Id.*

In response to the August 20222 NOPR, ClimateMaster disagreed with DOE's proposed values for the liquid ESP for WSHPs, arguing that the pumping and cooling tower fan power adder specified in AHRI 920–2020 is incorrect. (ClimateMaster, No. 22 at p. 8) ClimateMaster commented that, according to a 2014 study conducted by S. Kavanaugh and K. Rafferty, pumping power for a closed loop ground-source heat pump (''GSHP'') system can reach 3.75 W/kBtu/h but not exceed 10 W/1kBtu/h, and that the values given in AHRI 920 are much higher than these values and are thus not representative of an installed system. (*Id.* at pp. 8–9) ClimateMaster recommended that DOE use the approach in AHRI 600, which includes pumping power for the internal pressure drop and adds a representative value for building pump and cooling tower operation. (*Id.* at p. 9) ClimateMaster commented that this AHRI 600 power adder for building pump and cooling tower energy consumption is based on the results of an analysis conducted of typical closed loop systems during the development of the AHRI 600 standard, which resulted in calculated power adders of 5.5 W/kBtu/h for full-load conditions and 1 W/kBtu/h for part-load conditions. (*Id.*)

FHP commented that the work done by the AHRI 600 working group took a more accurate approach to today's systems that allows for varying the fans and pumping energy required during part-load conditions. (FHP, No. 26 at p. 5) FHP recommended that DOE review the values assigned to tower/pump penalty in AHRI 600 for guidance on this topic, stating that a single-head pressure as a means of estimating the pumping penalty does not allow for the variations expected at part-load conditions. (*Id.*) WaterFurnace commented that adopting ISO 13256 and AHRI 600 would solve the issue, noting that the pump power is accounted for in AHRI 600. (WaterFurnace, No. 20 at p.8)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. AHRI 600–2023 includes provisions to separately account for pump power to overcome liquid internal and external static pressure.

Sections 6.3.3 and 6.4.3 of AHRI 600–2023 specify to include pump power to overcome the liquid internal static pressure of the WSHP in all cooling and heating ratings. The calculation for pump power adjustment to account for liquid internal static pressure uses a similar methodology to ISO 13256–1:1998, but uses a higher pump efficiency of 75% (as compared to 30% in ISO 13256–1:1998) to better represent the efficiency of system pumps in commercial water-loop installations. Specifically, for units without integral pumps, the AHRI 600–2023 approach adds pump power to overcome liquid internal static pressure. For units with integral pumps, section 5.4.13 of AHRI 600–2023 specifies a liquid ESP value of zero to use when testing WSHPs with an integral pump for commercial ratings and specifies to test at the minimum liquid ESP if the minimum is higher than zero ESP. In the case of testing a unit with an integral pump at a liquid ESP above zero, sections 6.3.3 and 6.4.3 of AHRI 600–2023 specify to subtract pump power to overcome liquid ESP using a similar methodology to the approach for calculating pump power adjustment for units without integral pumps.

Sections 6.3.7 (for IEER), 6.3.11 (for AEER), and 6.4.4 (for ACOP) of AHRI 600–2023 specify to include power to account for power required for a system pump to overcome liquid ESP representative of a commercial water-loop installations. As discussed in section III.E.3 of this final rule, AHRI 600–2023 specifies these provisions to account for system pump power for calculation of AEER, IEER, and ACOP, but not for optional representations of EER and COP.

The provisions for accounting for pump power (to overcome liquid internal and external static pressure) were developed in AHRI 600 committee meetings after publication of the August 2022 NOPR. While the AHRI 600–2023 approach is not the same as that proposed in the August 2022 NOPR in that it uses a different calculation method and assumes a different liquid ESP, it is consistent with the August 2022 NOPR proposal to include power to represent power consumed by pumps to overcome both liquid internal and external static pressure. The AHRI 600–2023 pump power adders are different than those suggested by ClimateMaster. However, having been developed through an industry consensus process subsequent to the timing of the August 2022 NOPR comment period, DOE surmises that the pump power approach specified in AHRI 600–2023 represents the prevailing industry consensus regarding the most appropriate method for addressing pump power. Further, DOE has concluded based on discussion in AHRI 600 committee meetings that the AHRI 600–2023 pump power approach is representative of typical water-loop WSHP applications. As a result, in this final rule, DOE is incorporating by reference into appendix C1 the methods specified in AHRI 600–2023 for accounting for pump power.

DOE notes that section 5.4.13.2 of AHRI 600–2023 specifies a minimum liquid ESP of 7.0 psi for residential representations. However, the residential representations have not yet been fully developed for WSHPs (see section III.A.2 of this document for more details). DOE will continue to work with the AHRI 600 committee to develop provisions for determining such ratings.

4. Test Liquid and Specific Heat Capacity

The current DOE WSHP test procedure, through adoption of section 4.1.9 of ISO 13256–1:1998, requires the test liquid for water-loop heat pumps and ground-water heat pumps to be water, and the test liquid for ground-loop heat pumps to be a 15 percent solution by mass of sodium chloride in water (*i.e.,* brine). 10 CFR 431.96. Further, the liquid enthalpy test method in Annex C of ISO 13256–1:1998, which is included in the current DOE WSHP test procedure, requires the use of the

specific heat capacity of the test liquid for calculating cooling and heating capacity but does not specify a value or method for calculating the specific heat capacity.

Section 5.1.7 of ISO 13256–1:2021 requires that the test liquid for the low temperature heating test (*i.e.,* EWT of 32 °F) must be a brine of the manufacturer's specification, while the test liquid for all other tests may be water or a brine of a composition and concentration specified by the manufacturer. ISO 13256–1:2021 does not specify a value or method for calculating the specific heat capacity of any test liquids.

In the August 2022 NOPR, DOE proposed in section 4.1 of proposed appendix C1 that the test liquid for all tests other than the proposed optional ''HFL3'' [10] low temperature heating test (*i.e.,* EWT of 32 °F) must be water, unless the manufacturer specifies to use a brine of 15-percent solution by mass of sodium chloride in water. 87 FR 53302, 53329. DOE also proposed in section 4.1 of proposed appendix C1 that the test liquid for the optional HFL3 low temperature heating test must be a brine of 15-percent solution by mass of sodium chloride in water. *Id.* Ground-loop applications of WSHPs typically use brine in the liquid loop because, in cold weather, the liquid temperature can reach 32 °F (*i.e.,* the temperature at which water freezes) in places. A 15-percent solution by mass of sodium chloride in water can withstand temperatures as low as 14 °F before freezing. Allowing the use of brine for testing would provide manufacturers the flexibility of providing ratings more representative of ground-loop applications. Therefore, DOE proposed to require brine as the liquid for the optional HFL3 low temperature heating test (conducted with an EWT of 32 °F), consistent with section 4.1.9 of ISO 13256–1:1998 and section 5.1.7 of ISO 13256–1:2021, to avoid the liquid freezing during the test. *Id.*

In the August 2022 NOPR, DOE tentatively concluded that a 15-percent solution by mass of sodium chloride, as specified in section 4.1.9.2 of ISO 13256–1:1998, is a representative brine composition and concentration for applications needing brine (*e.g.,* ground-loop), and that consumers can make more representative comparisons between models when all models are rated with the same brine composition and concentration. *Id.*

As discussed in section III.D.2 of the August 2022 NOPR, DOE proposed to adopt specific sections of AHRI 340/360–2022 in its test procedure for WSHPs. *Id.* AHRI 340/360–2022 in turn references the test method in ANSI/ASHRAE 37–2009, in which section 12.2.1 requires that thermodynamic properties of liquids be obtained from the ASHRAE Handbook—Fundamentals.[11] The ASHRAE Handbook—Fundamentals specifies specific heat capacity values for water and for a brine of 15 percent solution by mass of sodium chloride at multiple temperatures. The absence of provisions in ISO 13256–1:1998 for how to determine specific heat capacity for test liquids creates the potential for variation in measured values based on how specific heat capacity is determined. Therefore, to minimize any such variation, DOE instead proposed in the August 2022 NOPR to adopt relevant provisions of ANSI/ASHRAE 37–2009. *Id.* DOE tentatively determined that the specifications in ANSI/ASHRAE 37–2009 would be appropriate for testing WSHPs because they are the generally accepted industry method used for testing similar equipment, such as WCUACs. *Id.*

In the August 2022 NOPR, DOE requested comment on the proposed requirements for using water or a brine of 15-percent solution by mass of sodium chloride as the test liquid. *Id.* DOE also requested comment on the representativeness and test burden associated with permitting the use of different liquids for different tests. *Id.* Finally, DOE requested comments on the proposal to utilize the thermodynamic properties specified in ANSI/ASHRAE 37–2009 through DOE's proposed incorporation by reference of AHRI 340/360–2022. *Id.*

In response to the August 2022 NOPR, MIAQ commented that sodium chloride is not a common anti-freeze and that propylene and ethylene glycol are more common. (MIAQ No. 23 at p. 6) MIAQ commented that it is unsure if nationally recognized testing laboratories [12] are equipped to deal with 15-percent solution by mass of sodium chloride as the test liquid. (*Id.*) MIAQ stated that specifying a particular antifreeze rather than relevant thermal properties for the test fluid hinders innovation and generates a heavy burden to develop and test with the specified medium. (*Id.*) MIAQ argued that specifying sodium chloride as the test liquid may require redesign of the units to avoid corrosion. (*Id.*)

WaterFurnace commented that supporting ISO 13256 and AHRI 600 would solve the issue. (WaterFurnace No. 20 at p. 8) WaterFurnace stated that it prefers to use methanol or ethanol as the test liquid because sodium chloride can damage lab equipment. (*Id.*)

ClimateMaster supported DOE's proposal to make provisions for low temperature testing but disagreed with the proposed fluid for testing. (ClimateMaster, No. 22 at p. 9) ClimateMaster stated that sodium chloride is not representative of a brine solution used in water-source applications in the field and is a carryover from a test liquid used in older standards such as AHRI 330–98, which was corrosive to test lab facilities and caused premature wear of hydronic components. (*Id.*) ClimateMaster recommended that DOE work with industry to create a national deviation of 13256–1:1998 that includes provisions for the use of a 15-percent solution by mass of methanol in water involving a specific gravity of methanol at 0.976 with a solution temperature of 68 °F. (*Id.*) ClimateMaster stated that this fluid is commonly used in the industry and has been an available option in the AHRI 13256–1:1998 certification program since its inception, and if DOE does not select this solution, an alternative option would be a 20-percent solution of propylene glycol, which is also commonly used in the industry. (*Id.*)

ClimateMaster supported DOE's proposal to require a standard set of properties for consistent performance calculations but disagreed that the only reference allowed for sink or source liquids can be the 2001 ASHRAE Handbook, stating that it does not include properties for alternative testing fluids, such as methanol in water, and therefore limits the available options for testable brine solutions. (*Id.*) ClimateMaster recommended that DOE provide provisions under a national deviation of ISO 13256–1:1998 while allowing for the use of other established property databases in addition to the 2001 ASHRAE handbook, such as the published data from Melinder 2010.[13] (*Id.*) WaterFurnace agreed with the need for a specified source of properties and commented that supporting ISO 13256

[10] ''HFL3'' is the nomenclature used to define the 32 °F full-load heating test that DOE proposed to add in appendix C1.

[11] The ASHRAE Handbook—Fundamentals is available at: *https://www.ashrae.org/technical-resources/ashrae-handbook.*

[12] MIAQ used the abbreviation NRL, but DOE expects that the intended term was NRTL, the acronym for nationally recognized testing laboratory.

[13] Properties of Secondary Working Fluids for Indirect Systems, Melinder, 2010 (''Melinder 2010'').

and AHRI 600 would solve the issue. (WaterFurnace, No. 20 at p. 8)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 in appendix C1. Section 5.4.14 of AHRI 600–2023 specifies that all cooling and heating tests be conducted with a 15 percent solution by mass of methanol in water, with a tolerance of 2 percentage points on the solution concentration and requires that the concentration be verified prior to and after completion of all standard rating tests. Section 5.4.14 of AHRI 600–2023 also specifies to use Melinder 2010 as the source for all thermodynamic properties of the test liquid. Finally, sections 6.3.3.2 and 6.4.3.2 of AHRI 600–2023 include provisions to remove any influence of the methanol solution on efficiency ratings, so that values are similar to those that would result from testing using pure water, which is the most common liquid used in non-geothermal installations of WSHPs. Specifically, these provisions specify to multiply all measured capacity values by 1.01 and to multiply all measured cooling total power values by 0.99.

DOE has concluded that the provisions in AHRI 600–2023 regarding test liquid and specific heat capacity provide a representative and repeatable method for testing WSHPs. Comments received in response to the August 2022 NOPR and discussion in AHRI 600 committee meetings indicate that a methanol solution is a more representative test liquid than sodium chloride brine and is more practical for testing as it is not corrosive to laboratory equipment. Further, the AHRI 600–2023 requirement to use methanol solution for all tests ensures repeatable results and minimizes test burden by avoiding a need to change test liquid between tests. By specifying use of Melinder 2010 as the source for thermodynamic properties, AHRI 600–2023 also ensures that thermodynamic properties for the test fluid are applied consistently. Additionally, the provisions in sections 6.3.3.2 and 6.4.3.2 of AHRI 600–2023 adjust measured values to be more representative of WSHP operation in non-geothermal applications (which do not encounter freezing temperatures), without the need to change test liquids to use water for higher temperature tests and methanol for low-temperature heating tests. DOE also considers the inclusions of these provisions in AHRI 600–2023 to represent industry consensus on the most appropriate method for testing WSHPs. Therefore, for the reasons discussed, DOE is incorporating by reference into appendix C1 the test liquid provisions from AHRI 600–2023 in this final rule.

5. Liquid Flow Rate

The current DOE test procedure, through adoption of section 4.1.6.2 of ISO 13256–1:1998, requires units with an integral liquid pump to be tested at the liquid flow rates specified by the manufacturer or those obtained at zero ESP difference, whichever provides the lower liquid flow rate. 10 CFR 431.96. Section 4.1.6.3 of ISO 13256–1:1998 requires that units without an integral liquid pump be tested at a liquid flow rate specified by the manufacturer.

In contrast to ISO 13256–1:1998, DOE noted in the June 2018 RFI that AHRI 340/360–2022 does not use a manufacturer-specified liquid flow rate, and instead specifies inlet and outlet water temperatures for WCUACs to be 85 °F and 95 °F, respectively, for standard-rating full-capacity operation. The temperature difference between inlet and outlet determines the liquid flow rate for the test. 83 FR 29048, 29054.

In the August 2022 NOPR, DOE proposed to incorporate by reference specific sections of AHRI 340/360–2022 in its test procedure for WSHPs, including Table 6. 87 FR 53302, 53330. Table 6 of AHRI 340/360–2022 specifies inlet and outlet liquid temperatures of 85 °F and 95 °F, respectively, for standard-rating cooling full-capacity operation. *Id.* This requires that liquid flow rate for the full-load cooling test is set at a level that results in a 10 °F temperature rise from the 85 °F inlet to the 95 °F outlet temperature. *Id.* Also, DOE proposed to adopt table 9 of AHRI 340/360–2022, which specifies use of manufacturer-specified part-load water flow rates for part-load tests. *Id.* at 87 FR 53331. In addition, DOE proposed that section E7 of AHRI 340/360 2022, which addresses units with condenser head pressure control stating that part-load liquid flow rate shall not exceed the liquid flow rate used for the full-load tests, be adopted in sections 5.1.1 and 5.1.2.1.2 of proposed appendix C1. *Id.* For heating tests, DOE proposed to specify in section 6.1 of proposed appendix C1 that if IEER is determined using option 1 in section 5.1 of proposed appendix C1, the liquid flow rate determined from the ''Standard Rating Conditions Cooling'' test for water-cooled equipment, as defined in Table 6 of AHRI 340/360–2022, must be used for all heating tests. *Id.* If IEER is determined using option 2 in section 5.1 of proposed appendix C1, DOE proposed in section 5.1.2.1.1 of proposed appendix C1 to use the liquid flow rate determined from the CFL3 high temperature cooling test for all heating tests. *Id.* Lastly, relating to tolerances, DOE proposed to require a condition tolerance of 1 percent for liquid flow rate, consistent with the condition tolerance specified in Table 9 of ISO 13256–1:1998 and adopt Table 11 of AHRI 340/360–2022, which specifies an operating tolerance of 2 percent for liquid flow rate. *Id.*

DOE requested commented on its proposal to adopt the AHRI 340/360–2022 approach for setting liquid flow rate for the full-load cooling test, namely by specifying inlet and outlet liquid temperature conditions rather than using a manufacturer-specified flow rate. *Id.* Additionally, DOE requested feedback on its proposals to use manufacturer-specified part-load liquid flow rates for part-load tests, that the part-load flow rate be no higher than the full-load flow rate, and to use the full-load liquid flow rate if no part-load liquid flow rate is specified. *Id.* In relation to heating tests, DOE requested comment on its proposal to use the liquid flow rate determined from the full-load cooling test for all heating tests. *Id.* Lastly, DOE requested comment on its proposal to specify an operating tolerance of 2 percent and a condition tolerance of 1 percent for liquid flow rate in all tests with a target liquid flow rate. *Id.* at 87 FR 53331–53332.

In response to the August 2022 NOPR, ClimateMaster and WaterFurnace stated that they disagree with the proposal to adopt the AHRI 340/360 approach for setting liquid flow rate because it moves the test standard along a prescriptive path that would discourage innovation for improvements in pressure drop and flow rate in heat exchanger design. (ClimateMaster, No. 22 at pp. 9–10; WaterFurnace, No. 20 at pp. 8–9) ClimateMaster recommended that DOE allow manufacturers to specify a given flow rate for full-load cooling tests. (ClimateMaster, No. 22 at p. 10) ClimateMaster also commented that DOE should also specify a maximum limit of 3.5 GPM/ton, which ClimateMaster stated aligns with DOE's statements in the August 2022 NOPR that 3 GPM/ton is a typical water flow rate for WSHPs that results in a temperature rise of approximately a 10 °F. (*Id.* at pp. 9–10) ClimateMaster commented that while flowrate is typically used and specified when testing WSHP equipment, this is not the case for temperature rise. (*Id.* p. 10) MIAQ recommended that DOE continue to support ISO 13256–1. (MIAQ, No. 23 at p. 7)

Regarding the part-load liquid flow rates, ClimateMaster supported DOE's

proposal to use manufacturer-specified part-load liquid flow rates for part-load tests. (ClimateMaster, No. 22 at p. 10) ClimateMaster recommended that the full-load liquid flow rate should be used for part-load tests if the system does not automatically reduce the liquid flow rate in part-load operation to the part-load flow rate when installed. (*Id.*) WaterFurnace agreed with DOE's proposal to use manufacturer-specified part-load liquid flow rates for part-load tests and commented that supporting ISO 13256/AHRI 600 would solve the issue. (WaterFurnace, No. 20 at p. 9)

Regarding liquid flow rate for heating tests, ClimateMaster supported DOE's proposal to use the full-load cooling liquid flow rate for all full-load heating tests. (ClimateMaster, No. 22 at p. 10) MIAQ commented that using the liquid flow rate determined from the full-load cooling test for all heating tests could be a problem in conditions where the saturated suction temperature is too high, overloading the compressor. (MIAQ, No. 23 at p. 7) MIAQ stated that this may not be an issue with a low enough EWT. (*Id.*) MIAQ commented that systems with inverter-driven compressors and active head pressure control may present challenges to fulfilling these tests. (*Id.*) WaterFurnace commented that supporting ISO 13256 and AHRI 600 would solve the issue. (WaterFurnace, No. 20 at p. 9) WaterFurnace commented that most standards have abandoned the prescriptive approach of determining liquid flow rate from the full-load cooling test to allow innovation and efficiency improvement. (*Id.*) WaterFurnace stated that using manufacturer-specified flow rate is preferred. (*Id.*)

Regarding tolerances liquid flow rates, ClimateMaster, WaterFurnace, and MIAQ commented in support of DOE's proposal to specify an operating tolerance of 2 percent and a condition tolerance of 1 percent for liquid flow rate in all tests with a target liquid flow rate. (ClimateMaster, No. 22 at p. 10; WaterFurnace, No. 20 at p. 9; MIAQ, No. 23 at p. 7)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. Section 5.4.15 of AHRI 600–2023 includes provisions regarding liquid flow rate. Specifically, this section specifies use of a manufacturer-specified flow rate rather than a fixed temperature rise (as recommended by commenters), but, similar to ClimateMaster's recommendation, section 5.4.15 also provides a maximum flow rate of 0.275 GPM per kBtu/h (which is equivalent to 3.3 GPM/ton, slightly lower than the 3.5 GPM/ton limit recommended in ClimateMaster's comment). Section 5.4.14 also specifies that a single manufacturer-specified flow rate be used for all tests, unless the equipment automatic adjusts flow rate or the liquid flow rate is reduced for operation at low EWTs for head pressure control, per section 5.9 of AHRI 600–2023. Further, section 5.4.15 specifies that if there is not a specified liquid flow rate and that the system does not provide automatic adjustment of the liquid flow that a liquid flow rate of 0.25 GPM per kBtu/h is used for all tests. It also specifies a liquid flow rate condition tolerance of 1 percent.

DOE has concluded that the approach for liquid flow rate specified in AHRI 600–2023 provides a representative and appropriate approach for testing WSHPs. The use of manufacturer-specified flow rate provides flexibility to manufacturers while the maximum liquid flow rate limit prevents manufacturer specification of unrepresentatively high flow rates for testing. With regards to MIAQ's concern that using the liquid flow rate determined from the full-load cooling test for all heating tests could be a problem in conditions where the saturated suction temperature is too high, overloading the compressor, DOE notes that the provisions specified in AHRI 600–2023 and incorporated by reference in this final rule allow manufacturers to specify different flow rates for tests other than the full-load cooling test so long as the specified flow rates for other tests are (a) below the maximum flow rate of 0.275 GPM per kBtu/h; and (b) achieved via automatic adjustment of the liquid flow rate by the equipment under test. Therefore, a manufacturer would have the ability to set different liquid flow rates for tests other than full-load cooling tests to ensure operation representative of how the equipment would operate under such conditions in field installations.

DOE also considers the inclusions of these provisions in AHRI 600–2023 to represent industry consensus on the most appropriate method for testing WSHPs. Therefore, for the reasons discussed, DOE is incorporating by reference into appendix C1 the liquid flow rate provisions from AHRI 600–2023 in this final rule.

6. Refrigerant Line Losses

Split-system WSHPs have refrigerant lines that can transfer heat to and from their surroundings, which can incrementally affect measured capacity. To account for this transfer of heat (referred to as ''line losses''), the current DOE WSHP test procedure, through adoption of ISO 13256–1:1998, provides that if line loss corrections are to be made, they shall be included in the capacity calculations (in section B4.2 for the indoor air enthalpy method and in section C3.3 for the liquid enthalpy test method of ISO 13256–1:1998). 10 CFR 431.96. ISO 13256–1:1998 does not specify the circumstances that require line loss corrections nor the method to use to determine an appropriate correction.

Section 7.3.3.4 of ANSI/ASHRAE 37–2009, the method of test referenced in AHRI 340/360–2022, specifies more detailed provisions to account for line losses of split systems in the outdoor air enthalpy method, and section 7.6.7.1 of ANSI/ASHRAE 37–2009 specifies to use the same provisions for the outdoor liquid coil method.

In the August 2022 NOPR, DOE proposed to incorporate by reference specific sections of AHRI 340/360–2022. 87 FR 53302, 53332. AHRI 340/360–2022 in turn references sections 7.6.7.1 and 7.3.3.4 of ANSI/ASHRAE 37–2009. *Id.* Sections 7.6.7.1 and 7.3.3.4 of ANSI/ASHRAE 37–2009 specify calculations for determining the line losses for bare copper or insulated lines. *Id.* DOE requested comment on the proposal to adopt the provisions for line loss adjustments included in sections 7.6.7.1 and 7.3.3.4 of ANSI/ASHRAE 37–2009 through incorporation by reference of AHRI 340/360–2022. *Id.*

In response to the August 2022 NOPR, ClimateMaster commented that adopting the line loss adjustments in ASHRAE 37–2009 is acceptable, as it is an industry best practice, but ClimateMaster stated it does not produce any split system heat pumps for use in commercial applications. (ClimateMaster, No. 22 at p.10) ClimateMaster recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that adopts the provisions of ANSI/ASHRAE 37–2009. (*Id.*) WaterFurnace agreed with DOE's proposal. (WaterFurnace, No. 20 at p. 9)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes section 5.1 of AHRI 600–2023. This section in turn references sections 7.6.7.1 and 7.3.3.4 of ANSI/ASHRAE 37–2009, which is consistent with the proposal from the August 2022 NOPR. DOE considers the inclusion of these provisions in the AHRI 600–2023 to represent industry consensus that these provisions provide an appropriate method for testing WSHPs. As a result, DOE is incorporating by reference into appendix C1 the methods from AHRI

600–2023 for calculating line loss adjustments in this final rule.

7. Airflow Measurement

The current DOE WSHP test procedure, through adoption of section D.1 of ISO 13256–1:1998, requires airflow measurements to be made in accordance with the provisions specified in several different industry test standards, ''as appropriate.'' [14] 10 CFR 431.96. However, ISO 13256–1:1998 is not explicit regarding the circumstances under which the different airflow measurement approaches included in these industry test standards should be used.

Section F8 of ISO 13256–1:1998 specifies the requirements for the nozzle apparatus used to measure airflow. This device determines airflow by measuring the change in pressure across a nozzle of known geometry. Airflow derivations using this approach often include a discharge coefficient (*i.e.,* the ratio of actual discharge air to theoretical discharge air) to account for factors that reduce the actual discharge air, such as nozzle resistance and airflow turbulence. In general, as the nozzle throat diameter decreases, nozzle resistance increases, thereby reducing actual discharge which is characterized by a lower discharge coefficient. Turbulent airflow (as characterized by Reynolds numbers [15]) and temperature also impact the discharge coefficient.

Section F8.9 of ISO 13256–1:1998 specifies that it is preferable to calibrate the nozzles in the nozzle apparatus, but that nozzles of a specific geometry may be used without calibration and by using the appropriate discharge coefficient specified in a lookup table in section F8.9 of ISO 13256–1:1998. ISO 13256–1:1998 does not specify the method that should be applied, however, to determine the coefficient of discharge for conditions that do not exactly match the values provided in the look-up table.

Elsewhere, sections 6.2 and 6.3 of ANSI/ASHRAE 37–2009 includes provisions regarding the nozzle airflow measuring apparatus that are identical to the provisions in section F8 of ISO 13256–1:1998, except for the method used to determine the coefficient of discharge. Section 6.3.3 of ANSI/ASHRAE 37–2009 uses a calculation in place of the look-up table used in ISO 13256–1:1998, thereby allowing determination of the coefficient of discharge at any point within the specified range.

In the August 2022 NOPR, DOE proposed to incorporate by reference specific sections of AHRI 340/360–2022. 87 FR 53302, 53333. AHRI 340/360–2022 in turn references the test method in ANSI/ASHRAE 37–2009. *Id.* Sections 6.2 and 6.3 of ANSI/ASHRAE 37–2009 include provisions regarding the nozzle airflow measuring apparatus that are identical to the provisions in section F8 of ISO 13256–1:1998, except for the method used to determine the coefficient of discharge. *Id.* Section 6.3.3 of ANSI/ASHRAE 37–2009 uses a calculation to determine the coefficient of discharge, thereby allowing determination of the coefficient of discharge at any point within the specified range. *Id.* DOE requested comment on the proposal to adopt the calculation of discharge coefficients and air measurement apparatus requirements as specified in ANSI/ASHRAE 37–2009. *Id.*

In response to the August 2022 NOPR, ClimateMaster supported DOE's proposal to adopt the calculation of discharge coefficients and air measurement apparatus requirements of ANSI/ASHRAE 37–2009, as it is an industry best practice, and recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that includes the provisions of ANSI/ASHRAE 37–2009. (ClimateMaster No. 22 at p. 10) WaterFurnace agreed with DOE's proposal. (WaterFurnace, No. 20 at p. 9)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes section 5.1 of AHRI 600–2023. This section in turn references the test method in ANSI/ASHRAE 37–2009, which is consistent with the proposal from the August 2022 NOPR. DOE considers the inclusion of these provisions in AHRI 600–2023 to represent industry consensus that these provisions provide an appropriate method for testing WSHPs. As a result, DOE is incorporating by reference into appendix C1 the methods from AHRI 600–2023 for measuring airflow in this final rule.

8. Air Condition Measurement

Indoor air temperature and humidity are key parameters that affect WSHP performance, and for this reason, ISO 13256–1:1998 requires accurate indoor air condition measurements. However, informative annexes E and F of ISO 13256–1:1998 specify few requirements for the methods used to measure indoor air temperature and humidity.

In the August 2022 NOPR, DOE proposed to incorporate by reference appendix C of AHRI 340/360–2022. 87 FR 53302, 53333. Appendix C of AHRI 340/360–2022 provides detailed specifications for the measurement of air conditions (including indoor air), including aspirating psychrometer requirements in section C3.2.1 of AHRI 340/360–2022 and sampling requirements in section C3.3 of AHRI 340/360–2022. *Id.* DOE requested commented on the proposal to adopt the air condition measurement provisions in appendix C of AHRI 340/360–2022. *Id.*

In response to the August 2022 NOPR, ClimateMaster supported DOE's proposal to adopt the air condition measurement provisions in appendix C of AHRI 340/360–2022, as it is industry best practice, and recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that includes similar air condition measurement provisions. (ClimateMaster No. 22 at p. 11) WaterFurnace agreed with DOE's proposal. (WaterFurnace No. 20 at p. 9)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes appendix C of AHRI 600–2023. This language is consistent with appendix C of AHRI 340/360–2022, as proposed in the August 2022 NOPR, and addresses comments that DOE should adopt AHRI 600. DOE considers the air condition measurement approach specified in AHRI 600–2023 to represent industry consensus regarding the most appropriate method for measuring air conditions for WSHPs. As a result, DOE is incorporating by reference into appendix C1 the methods from AHRI 600–2023 for measuring air conditions in this final rule.

9. Duct Losses

In the calculations for cooling and heating capacities for the indoor air enthalpy test method of ISO 13256–1:1998, the test standard includes a footnote in sections B3 and B4 of annex B stating that the equations do not provide allowances for heat leakage in the test equipment (*i.e.,* duct losses). In

[14] The cited industry test standards include: ISO 3966:1977, ''Measurement of fluid flow in closed conduits—Velocity area method using Pitot static tubes;'' ISO 5167–1:1991, ''Measurement of fluid flow by means of pressure differential devices—Part 1: Orifice plates, nozzles and Venturi tubes inserted in circular cross-section conduits running full;'' and ISO 5221:1984, ''Air Distribution and air diffusion—Rules to methods of measuring airflow rate in an air handling duct.'' These standards can be purchased from the ISO store at *https://www.iso.org/store.html.*

[15] ''Reynolds number'' is a dimensionless number that characterizes the flow properties of a fluid. Section F8.9 of ISO 13256–1:1998 includes an equation for calculating Reynolds number that depends on a temperature factor, air velocity, and throat diameter.

contrast, section 7.3.3.3 of ANSI/ASHRAE 37–2009 requires adjustments for such heat leakages and specifies methods to calculate appropriate values for the adjustments.

In the August 2022 NOPR, DOE proposed to incorporate by reference specific sections of AHRI 340/360–2022. 87 FR 53302, 53334. AHRI 340/360–2022 in turn references section 7.3.3.3 of ASHRAE 37–2009, which requires and provides equations for duct loss adjustments. *Id.* DOE requested comment on whether the duct loss adjustments as described in section 7.3.3.3 of ANSI/ASHRAE 37–2009 or any other duct loss adjustments are used to adjust capacity measured using the indoor air enthalpy method when testing WSHPs. *Id.*

In response to the August 2022 NOPR, ClimateMaster supported DOE's proposal to adopt the duct loss provisions as it is an industry best practice for companies that produce split-system heat pumps for use in commercial applications. (ClimateMaster, No. 22 at p. 11) ClimateMaster recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that includes these provisions of ANSI/ASHRAE 37–2009. (*Id.*) WaterFurnace agreed with DOE's proposal. (WaterFurnace, No. 20 at pp. 9)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes section 5.1 of AHRI 600–2023. This section in turn references ANSI/ASHRAE 37–2009, including section 7.3.3.3, which is consistent with the proposal from the August 2022 NOPR. DOE considers the inclusion of these provisions in AHRI 600–2023 to represent industry consensus that these provisions provide an appropriate method for testing WSHPs. Therefore, DOE is incorporating by reference into appendix C1 the equations for duct loss adjustments from section 5.1 of AHRI 600–2023 in this final rule. Regarding the comment from ClimateMaster, DOE notes that these provisions for calculating duct losses apply to testing all WSHPs, not just split systems.

10. Refrigerant Charging

The amount of refrigerant can have a significant impact on the system performance of air conditioners and heat pumps. DOE's current test procedure for WSHPs requires that units be set up for test in accordance with the manufacturer installation and operation manuals. 10 CFR 431.96(e). In addition, the current DOE test procedure states that if the manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressures in the installation and operation manual, any value within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation or operation manual, in which case the specified rating value shall be used. 10 CFR 431.96(e)(1) However, the current DOE test procedure for WSHPs does not provide charging instructions to be used if the manufacturer does not provide instructions in the manual that is shipped with the unit or if the provided instructions are unclear or incomplete. In addition, ISO 13256–1:1998 does not provide any specific guidance on setting and verifying the refrigerant charge of a unit aside from stating in section A2.3 of that standard that equipment shall be evacuated and charged with the type and amount of refrigerant specified in the manufacturer's instructions, where necessary.

In the August 2022 NOPR, DOE proposed to incorporate by reference section 5.8 of AHRI 340/360–2022. 87 FR 53302, 53334. This section specifies refrigerant charging parameters, including specifying which set of installation instructions to use for charging, explaining what to do if no instructions are provided, specifying that target values of parameters are the centers of the ranges allowed by installation instructions, and specifying tolerances for the measured values. *Id.* The approach also requires that refrigerant line pressure gauges be installed for single-package units, unless otherwise specified in manufacturer instructions. *Id.* DOE requested comment on the proposal to adopt the refrigerant charging requirements in section 5.8 of AHRI 340/360–2022. *Id.* at 87 FR 53335.

In response to the August 2022 NOPR, ClimateMaster commented that while all commercially single package WSHP units are developed with specific factory system charge weights, the only provision DOE proposed for a charge weight tolerance is in Table 4 of section 5.8.3 of AHRI 340/360–2022, which specifies a tolerance of ±2 oz. (ClimateMaster, No. 22 at p. 11) ClimateMaster commented that it considers this tolerance unacceptable, as 2 oz can be upwards of 10 percent of the overall system charge on small capacity heat pumps. (*Id.*) ClimateMaster further stated that the procedures for charging that DOE provided in sections 5.8.4.1 and 5.8.4.2 of AHRI 340/360–2022 are not applicable as most single package systems do not contain a liquid line service connection. (*Id.*) ClimateMaster commented that the tolerances that DOE provided in Table 4 of section 5.8.3 of AHRI 340/360–2022 reference items related to outdoor air conditions, which are not applicable to WSHPs. (*Id.*) ClimateMaster commented that DOE's proposal lacks provisions for the possibility that the operating mode of the system could set the charge. (*Id.*) For these reasons, ClimateMaster recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that allows the WSHP industry to develop a list of charging provisions that meet the intent of those found in AHRI 340/360–2022. (*Id.*) WaterFurnace agreed with DOE's proposal regarding refrigerant charging. (WaterFurnace, No. 20 at p. 9)

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes section 5.4.11 of AHRI 600–2023. This language is consistent with section 5.8 of AHRI 340/360–2022, as proposed for use in the August 2022 NOPR, and addresses commenters' concerns that DOE should adopt AHRI 600. With regards to the comment from ClimateMaster regarding the refrigerant charging proposals in the August 2022 NOPR (which are consistent with the provisions in AHRI 600–2023), DOE notes that these provisions are used only if the manufacturer's charging instructions do not specify a tighter charging tolerance (as specified in section 5.4.11.4 of AHRI 600–2023). Therefore, these provisions provide flexibility to manufacturers to specify charging instructions appropriate to their models and serve mainly to address cases in which manufacturer's instructions provide inadequate, incomplete, or conflicting charging instructions. Specifically, these provisions allow manufacturers to specify tighter tolerances and/or to specify charging based on whatever method is most appropriate for a given model.

DOE considers the inclusion of these provisions in AHRI 600–2023 to represent industry consensus that these provisions provide an appropriate method for testing WSHPs. Therefore, DOE is incorporating by reference into appendix C1 the refrigerant charging requirements from section 5.4.11 of AHRI 600–2023 in this final rule.

11. Voltage

Operating voltage can affect the measured efficiency of air conditioners and heat pumps. The current DOE WSHP test procedure, through adoption of Tables 1 and 2 of ISO 13256–1:1998, requires units rated with dual nameplate voltages to be tested at both

voltages or at the lower voltage if only a single rating is to be published. 10 CFR 431.96.

In the August 2022 NOPR, DOE proposed to incorporate by reference section 6.1.3.1 of AHRI 340/360–2022. 87 FR 53302, 53335. Section 6.1.3.1 of AHRI 340/360–2022 specifies that units with dual nameplate voltage ratings must be tested at the lower of the two voltages if only a single standard rating is to be published, or at both voltages if two standard ratings are to be published. *Id.* This approach is equivalent to the approach for dual nameplate voltages specified in tables 1 and 2 of ISO 13256–1:1998 and tables 2 and 3 of ISO 13256–1:2021. *Id.* DOE requested commented on the proposal to adopt the voltage provisions in section 6.1.3.1 of AHRI 340/360–2022. *Id.*

In response to the August 2022 NOPR, ClimateMaster supported DOE's proposal to adopt the voltage provisions in section 6.1.3.1 of AHRI 340/360–2022 because it is industry best practice and recommended that DOE work with industry to create a national deviation of ISO 13256–1:1998 that includes the proposed language. (ClimateMaster, No. 22 at pp. 11–12) WaterFurnace agreed with DOE's proposal. (WaterFurnace, No. 20 at p. 9).

As discussed in section III.D of this final rule, DOE is incorporating by reference AHRI 600–2023 into appendix C1. This includes section 6.2.2 of AHRI 600–2023. This language is consistent with section 6.1.3.1 of AHRI 340/360–2022, which was proposed in the August 2022 NOPR, as well as with tables 1 and 2 of ISO 13256–1:1998 and tables 2 and 3 of ISO 13256–1:2021. DOE considers the inclusion of these voltage provisions in AHRI 600–2023 to represent industry consensus that these provisions provide an appropriate method for testing WSHPs. As a result, DOE is incorporating by reference into appendix C1 the voltage provisions from AHRI 600–2023 in this final rule.

12. Non-Standard Low-Static Indoor Fan Motors

As discussed in section III.F.1.a of this document, DOE is adopting higher ESPs for WSHPs with a cooling capacity greater than or equal to 75,000 Btu/h that are included in section 5.5.1.1 of AHRI 600–2023 and are consistent with the ESP levels recommended in the ACUAC and ACUHP Working Group TP Term Sheet. However, individual models of WSHPs in this capacity range with indoor fan motors intended for installation in applications with a low ESP may not be able to operate at the proposed full-load ESP requirements at the full-load indoor rated airflow. To address this situation, section 3.2.30 of AHRI 600–2023 defines ''non-standard low-static indoor fan motors'' as motors in units with cooling capacity greater than or equal to 75,000 Btu/h which cannot maintain ESP as high as specified in the test procedure when operating at the full-load rated indoor airflow and that are distributed in commerce as part of an individual model within the same basic model that is distributed in commerce with a different motor specified for testing that can maintain the required ESP. Section 5.7.4.3 of AHRI 600–2023 includes test provisions for WSHPs with non-standard low-static indoor fan motors that cannot reach the ESP within tolerance during testing, which require using the maximum available fan speed that does not overload the motor or motor drive, adjusting the airflow-measuring apparatus to maintain airflow within tolerance, and operating with an ESP as close as possible to the minimum ESP requirements for testing. This approach is consistent with the industry test standard referenced by the DOE test procedure for DX–DOASes (AHRI 920–2020, section 6.5.2.5). *See* appendix B to 10 CFR 431.96.

As discussed in section III.G.3 of this document, DOE is clarifying that representations for a WSHP basic model must be based on the least efficient individual model(s) distributed in commerce within the basic model (with the exception specified in 10 CFR 429.43(a)(3)(v)(A) for certain individual models with the components listed in Table 6 to 10 CFR 429.43(a)(3)). DOE has concluded that the combination of (1) the provisions in AHRI 600–2023 for testing models with ''non-standard low-static indoor fan motors'' with (2) the requirement that basic models be rated based on the least efficient individual model (with certain exceptions, as discussed) provides an appropriate approach for handling WSHP models with these motors because if an individual model with a non-standard low-static indoor fan motor is tested, the test would be conducted at an indoor airflow representative for that model. But because testing at the rated airflow for such an individual model would result in testing at an ESP lower than the requirement and thus a lower indoor fan power, the representations for that basic model will be required to be based on an individual model with an indoor fan motor that can achieve the ESP requirements at the rated airflow. Consistent with incorporating by reference AHRI 600–2023 into appendix C1, in this final rule, DOE is adopting the AHRI 600–2023 provisions for testing models with non-standard low-static indoor fan motors.

G. Configuration of Unit Under Test

1. Background and Summary

WSHPs are sold with a wide variety of components, including many that can optionally be installed on or within the unit both in the factory and in the field. In all cases, these components are distributed in commerce with the WSHP but can be packaged or shipped in different ways from the point of manufacturer for ease of transportation. Each optional component may or may not affect a model's measured efficiency when tested to the DOE test procedure adopted in this final rule. For certain components not directly addressed in the DOE test procedure, DOE proposed to adopt more specific instructions on how each component should be handled for the purposes of making representations in 10 CFR part 429 in the August 2022 NOPR. 87 FR 53302, 53335. Specifically, the proposed instructions provide manufacturers clarity on how components should be treated and how to group individual models with and without optional components for the purposes of representations to reduce burden. *Id.*

As proposed in the August 2022 NOPR, DOE is handling WSHP components in two distinct ways in this final rule to help manufacturers better understand their options for developing representations for their differing product offerings. *Id.* First, as proposed in the August 2022 NOPR, the treatment of some components is specified by the test procedure to limit their impact on measured efficiency. *Id.* For example, a fresh air damper must be set in the closed position and sealed during testing, resulting in a measured efficiency that would be similar or identical to the measured efficiency for a unit without a fresh air damper. *Id.*

Second, for certain components not directly addressed in the DOE test procedure, this final rule adopts the specific instructions proposed in the August 2022 NOPR on how each component should be handled for the purposes of making representations in 10 CFR part 429. *See Id.* at 87 FR 53335–53336. Specifically, these instructions provide manufacturers clarity on how components should be treated and how to group individual models with and without optional components for the purposes of representations, in order to reduce burden. DOE is adopting these provisions in 10 CFR part 429 to allow for testing of certain individual models

that can be used as a proxy to represent the performance of equipment with multiple combinations of components. DOE is adopting provisions expressly allowing certain models to be grouped together for the purposes of making representations and allowing the performance of a model without certain optional components to be used as a proxy for models with any combinations of the specified components, even if such components would impact the measured efficiency of a model. Steam/hydronic heat coils are an example of such a component. The efficiency representation for a model with a steam/hydronic heat coil is based on the measured performance of the WSHP as tested without the component installed because the steam/hydronic heat coil is not easily removed from the WSHP for testing.[16] *Id.*

In this final rule, DOE is adopting these provisions in 10 CFR part 429 as proposed to allow for testing of certain individual models that can be used as a proxy to represent the performance of equipment with multiple combinations of components, though DOE is also adopting provisions that address additional components not included in the August 2022 NOPR, reflecting comments received in response to the August 2022 NOPR and provisions in AHRI 600–2023.

2. Components Addressed Through Test Provisions of 10 CFR Part 431, Subpart F, Appendix C1

In the August 2022 NOPR, DOE proposed test provisions for specific components, including all of the components listed in section D3 of AHRI 340/360–2022 for which there is a test procedure action which limits the impacts on measured efficiency (*i.e.,* test procedure provisions specific to the component that are not addressed by general provisions in AHRI 340/360–2022 that negates the component's impact on performance). *Id.* at 87 FR 53336. These provisions specified how to test a unit with such a component (*e.g.,* for a unit with hail guards, remove hail guards for testing). *Id.* The proposed test provisions were consistent with the provision in section D3 of AHRI 340/360–2022 but included revisions for further clarity and specificity (*e.g.,* adding clarifying provisions for how to test units with modular economizers as opposed to units shipped with economizers installed). *Id.* Specifically, DOE proposed to require in appendix C1 that steps be taken during unit set-up and testing to limit the impacts on the measurement of these components:

- Desiccant Dehumidification Components
- Air Economizers
- Fresh Air Dampers
- Power Correction Capacitors
- Ventilation Energy Recovery Systems (VERS)
- Barometric Relief Dampers
- UV Lights
- Steam/Hydronic Coils
- Refrigerant Reheat
- Fire/Smoke/Isolation Dampers
- Process Heat Recovery/Reclaim Coils/Thermal Storage.

Id. at 87 FR 53336–53337.

As DOE did not receive any comments regarding this proposal in response to the August 2022 NOPR, it is adopting the provisions as proposed in this final rule.

3. Components Addressed Through Representation Provisions of 10 CFR 429.43

In the August 2022 NOPR, consistent with the Commercial HVAC Term Sheet and the Commercial HVAC Enforcement Policy, DOE proposed provisions that explicitly allow representations for individual models with certain components to be based on testing for individual models without those components and proposed a table (''Table 6 to Paragraph (a)(3)(v)(A)'')[17] at 10 CFR 429.43(a)(3) listing the components for which these provisions would apply. *Id.* at 87 FR 53337. There are three components specified explicitly for WSHPs in the Commercial HVAC Enforcement Policy that are not included in section D3 of AHRI 340/360–2022: (1) Condenser Pumps/Valves/Fittings; (2) Condenser Water Reheat; and (3) Electric Resistance Heaters. *Id.* DOE tentatively concluded that the inclusion of these components as optional components for WSHPs is appropriate, except for electric resistance heaters. *Id.* DOE tentatively determined that electric resistance heaters would have a negligible effect on tested efficiency as they would be turned off for test and not impose a significant pressure drop. *Id.* DOE proposed the following components be listed in Table 6 to Paragraph (a)(3)(v)(A):

- Desiccant Dehumidification Components,
- Air Economizers,
- Ventilation Energy Recovery Systems (VERS),
- Steam/Hydronic Heat Coils,
- Refrigerant Reheat, Fire/Smoke/Isolation Dampers,
- Powered Exhaust/Powered Return Air Fans,
- Sound Traps/Sound Attenuators,
- Process Heat Recovery/Reclaim Coils/Thermal Storage,
- Indirect/Direct Evaporative Cooling of Ventilation Air,
- Condenser Pumps/Valves/Fittings,
- Condenser Water Reheat,
- Grill Options,
- Non-Standard Indoor Fan Motors.

Id.

Additionally, DOE proposed to specify that the basic model representation must be based on the least efficient individual model that is a part of the basic model and clarified how this long-standing basic model provision interacts with the component treatment in 10 CFR 429.43 that was proposed. *Id.* DOE proposed clarifying instructions for instances when individual models within a basic model may have more than one of the specified components and there may be no individual model without any of the specified components. *Id.* DOE proposed the concept of an ''otherwise comparable model group'' (''OCMG''). *Id.*

As discussed in the August 2022 NOPR, an OCMG is a group of individual models within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure other than the specific components listed in Table 6 to Paragraph (a)(3)(v)(A) but may include individual models with any combination of such specified components. *Id.* Therefore, a basic model can be composed of multiple OCMGs, each representing a unique combination of components that affect energy consumption as measured according to the applicable test procedure, other than the specified excluded components listed in Table 6 to Paragraph (a)(3)(v)(A). *Id.* For example, a manufacturer might include two tiers of control system within the same basic model, in which one of the control systems has sophisticated diagnostics capabilities that require a more powerful control board with a higher wattage input. *Id.* WSHP individual models with the ''standard'' control system would be part of OCMG A, while individual models with the ''premium'' control system would be part of a different OCMG B, because the

[16] Note that in certain cases, as explained further in section III.G.3.c of this document, the representation may have to be based on an individual model with a steam/hydronic coil.

[17] DOE notes that in the August 2022 NOPR, DOE referred to this table as ''Table 1 to Paragraph (a)(3)(ii)(A) .'' Due to the publication of other regulatory documents, DOE is now referring to this Table as ''Table 6 to Paragraph (a)(3)(v)(A).''

control system is not one of the specified exempt components listed in Table 6 to Paragraph (a)(3)(v)(A). *Id.* However, both OCMGs may include different combinations of specified exempt components. *Id.* Also, both OCMGs may include any combination of characteristics that do not affect the efficiency measurement, such as paint color. *Id.*

Further discussed in the August 2022 NOPR, an OCMG is used to determine which individual models are used to determine a represented value. *Id.* Specifically, when identifying the individual model within an OCMG for the purpose of determining a representation for the basic model, only the individual model(s) with the least number (which could be zero) of the specific components listed in Table 6 to Paragraph (a)(3)(v)(A) is considered. *Id.* This clarifies which individual models are exempted from consideration for determination of represented values in the case of an OCMG with multiple specified components and no individual models with zero specific components listed in Table 6 to (a)(3)(v)(A) *(i.e.,* models with a number of specific components listed in Table 6 to (a)(3)(v)(A) greater than the least number in the OCMG are exempted). *Id.* In the case that the OCMG includes an individual model with no specific components listed in Table 6 to Paragraph (a)(3)(v)(A), then all individual models in the OCMG with specified components would be exempted from consideration. *Id.* The least-efficient individual model across the OCMGs within a basic model would be used to determine the representation of the basic model. *Id.* In the case where there are multiple individual models within a single OCMG with the same non-zero least number of specified components, the least efficient of these would be considered. *Id.*

In the August 2022 NOPR, DOE relied on the term ''comparable'' as opposed to ''identical'' to indicate that for the purpose of representations, the components that impact energy consumption as measured by the applicable test procedure are the relevant components to consider. *Id.* In other words, differences that do not impact energy consumption, such as unit color and presence of utility outlets, would not warrant separate OCMGs. *Id.*

The use of the OCMG concept results in the represented values of performance that are representative of the individual model(s) with the lowest efficiency found within the basic model, excluding certain individual models with the specific components listed in Table 6 to Paragraph (a)(3)(v)(A). *Id.* at 87 FR 53337–53338. Further, the approach, as proposed, was structured to more explicitly address individual models with more than one of the specific components listed in Table 6 to Paragraph (a)(3)(v)(A), as well as instances in which there is no comparable model without any of the specified components. *Id.* at 87 FR 53338. DOE developed a document of examples to illustrate the approach proposed in the August 2022 NOPR for determining represented values for WSHPs with specific components, and in particular the OCMG concept. *See* EERE–2017–BT–TP–0029; 87 FR 53302, 53338.

In the August 2022 NOPR, DOE proposed provisions in 10 CFR 429.43(a)(3)(v)(A) that included each of the components specified in section D3 of AHRI 340/360–2022 for which the test provisions for testing a unit with these components may result in differences in ratings compared to testing a unit without these components, except for the following features: (1) Evaporative Pre-cooling of Condenser Intake Air; (2) Non-Standard Ducted Condenser Fans; and (3) Coated Coils. 87 FR 53302, 53338–53339.

In response to the August 2022 NOPR, ClimateMaster commented that it agrees with DOE's several proposals on this issue, but it believes that Table 6 in paragraph (a)(3) should include additional components, specifically water-side economizers and high effectiveness filters. (ClimateMaster, No. 22 at p. 12) ClimateMaster recommended that DOE create a national deviation of ISO 13256–1:1998 that adopts the proposed language with modifications to include water-side economizers and high effectiveness indoor filters. (*Id.*) WaterFurnace commented that the proposals may work for large motors but noted that the small volume of these larger motors would not justify regulation efforts and AHRI 340/360 omits smaller motors. (WaterFurnace, No. 20 at p. 10)

With regards to the comment from ClimateMaster that waterside economizers and high effectiveness filters should be included in Table 6 to Paragraph (a)(3)(v)(A), DOE notes that the impact of high effectiveness filters can be entirely mitigated by testing with a standard filter, which is required by section 5.4.5 of AHRI 600–2023. Therefore, DOE has concluded that treatment as specific components in representation provisions in 10 CFR 429.43 is not warranted for high effectiveness filters. With regards to waterside economizers, DOE has included waterside economizers and desuperheaters in the updated Table 6 to Paragraph (a)(3)(v)(A) adopted in this final rule, as DOE has determined that it is appropriate to make representations for WSHPs without these components present, consistent with the inclusion of these components in section D3 of AHRI 600–2023.

With regard to the comment from WaterFurnace that only a small portion of the market has larger motors and therefore that they are not worth regulating, DOE notes that the approach for non-standard high-static indoor fan motors (as proposed in the August 2022 NOPR and included in AHRI 600–2023) does not expand the scope of regulations to cover equipment with higher-static motors. Equipment that meets the DOE definition of WSHP is covered equipment, regardless of the size of indoor fan motor. The adopted approach reduces burden to manufacturers by allowing grouping of WSHP individual models with non-standard high-static indoor fan motors in the same basic model as corresponding individual models with standard indoor fan motors (and thus rating all individual models in the basic model based on performance with the standard indoor fan motor), as long as the non-standard high-static indoor fan motor has the same or better relative efficiency performance as the standard motor included in the individual model with the standard indoor fan motor.

4. Enforcement Provisions of 10 CFR 429.134

In the August 2022 NOPR, consistent with the Commercial HVAC Term Sheet and the Commercial HVAC Enforcement Policy, DOE proposed provisions in 10 CFR 429.134(dd)(2)[18] regarding how DOE would assess compliance for basic models that include individual models distributed in commerce if DOE cannot obtain for testing individual models without the components that are the basis of representation. 87 FR 53302, 53339. Specifically, DOE proposed that if a basic model includes individual models with components listed at Table 6 to Paragraph (a)(3)(v)(A) and DOE is not able to obtain an individual model with the least number of those components within an OCMG (as defined in 10 CFR 429.43(a)(3) and discussed in section III.G.3.b of this final rule), DOE may test any individual model within the OCMG. *Id.*

In response to the August 2022 NOPR, ClimateMaster stated that it disagrees

[18] DOE notes that in the August 2022 NOPR, DOE referred to this section as ''10 CFR 429.134(t)(2).'' Due to the publication of other regulatory documents, DOE is now referring to this section as ''10 CFR 429.134(dd)(2).''

with the provisions proposed in 10 CFR 429.134(dd)(2) in the August 2022 NOPR, stating that most WSHPs are built for specific orders based on given configurations or options. (ClimateMaster, No. 22 at p. 12) ClimateMaster commented that if DOE requires an individual model with the lowest number of specific components, it may not be available to test, and that the proposal would allow DOE testing with a model that includes the specific component. (*Id.*) ClimateMaster recommended that DOE instead allow a manufacturer to provide an individual model with the least number of specific components within a specific and agreed-upon timeframe (*i.e.,* rather than testing a model that includes a specific component). (*Id.*)

With regards to the comment from ClimateMaster, the provisions proposed in the August 2022 NOPR at 10 CFR 429.134(dd)(2) specify that DOE may test any individual model within the otherwise comparable model group if DOE is not able to obtain an individual model with the least number (which could be zero) of those components within the otherwise comparable model group. DOE will attempt to obtain a model with the least number of those components of specific components listed at Table 6 to Paragraph (a)(3)(v)(A). However, if DOE is unable to obtain such a model, DOE must retain the option to conduct assessment testing on an available model, and thus, in this final rule, DOE is adopting the provisions from the NOPR as proposed, at 10 CFR 429.134(dd)(2).

H. Represented Values and Enforcement

1. Cooling Capacity

For WSHPs, cooling capacity determines equipment class, which in turn determines the applicable energy conservation standard. 10 CFR 431.97. In the August 2022 NOPR, DOE noted that while cooling capacity is a required represented value for WSHPs, DOE does not currently specify provisions for WSHPs regarding how close the represented value of cooling capacity must be to the tested or AEDM-simulated cooling capacity, or whether DOE will use measured or certified cooling capacity to determine equipment class for enforcement testing. 87 FR 53302, 53339. DOE proposed to add the following provisions regarding cooling capacity for WSHPs: (1) a requirement that the represented cooling capacity be between 95 percent and 100 percent of the tested or AEDM-simulated cooling capacity; and (2) an enforcement provision stating that DOE would use the mean of measured cooling capacity values from testing, rather than the certified cooling capacity, to determine the applicable standards. *Id.*

In response to the August 2022 NOPR, ClimateMaster commented that it supports DOE's proposal for the published capacity to fall within 95 percent to 100 percent of the tested value or the value found through the AEDM. (ClimateMaster, No. 22 at p. 12) WaterFurnace commented that it saw no problem with DOE's proposal. (WaterFurnace, No. 20 at p. 10) MIAQ commented that it supports the tolerance of 5 percent below the rated/marked capacity, but not with the 100-percent limit. (MIAQ, No. 23 at p. 8) MIAQ stated that manufacturers must account for many tolerances in their system, causing them to rate their units conservatively, and this conservative rating will not impact customers because the unit will perform better than advertised. (*Id.*)

In response to the comment from MIAQ, DOE notes that the proposed cooling capacity provisions specify that the represented cooling capacity be between 95 percent and 100 percent of the tested or AEDM-simulated cooling capacity, which allows for conservative rating up to 5 percent—*i.e.,* the represented cooling capacity may be 5 percent lower than the tested or AEDM-simulated cooling capacity. MIAQ's comment suggests MIAQ interpreted the proposal to mean the tested or simulated capacity cannot exceed 100 percent of represented capacity, which would not allow conservative ratings. However, DOE has concluded that MIAQ's concern that conservative rating should be allowed is addressed in the proposed provisions because the cooling capacity provisions explicitly allow conservative ratings up to 5 percent. Therefore, for the reasons discussed in the August 2022 NOPR and previously in this section, DOE is adopting the cooling capacity representation and enforcement provisions as proposed at 10 CFR 429.43(a)(3)(v)(B) and 10 CFR 429.134(dd)(1), respectively.

2. Enforcement of IEER

In the August 2022 NOPR, DOE proposed two options for determination of IEER—''option 1'' based on testing at the EWTs specified in AHRI 340/360–2022 for determining IEER, and ''option 2'' based on testing at the EWTs specified in ISO 13256–1:1998 and interpolating/extrapolating performance to the EWTs specified in AHRI 340/360–2022. 87 FR 53302, 53339. For assessment or enforcement testing, DOE proposed provisions in 10 CFR 429.134(t)(3) specifying that that the Department would determine IEER according to the ''Option 1'' approach, unless the manufacturer has specified that the ''Option 2'' approach should be used for the purposes of enforcement, in which case the Department would determine IEER according to the ''Option 2'' approach. *Id.*

As discussed in section III.E.1 of this final rule, DOE is not adopting two methods for determining IEER, and is instead adopting a single method for determining IEER by incorporating by reference AHRI 600–2023 into appendix C1. Because this final rule includes only one method for determining IEER, the proposed enforcement provisions for the method of determination of IEER are no longer applicable, and DOE is not adopting the proposed provisions.

I. Test Procedure Costs

EPCA requires that the test procedures for commercial package air conditioning and heating equipment, including WSHPs, be those generally accepted industry testing procedures or rating procedures developed or recognized by either AHRI or ASHRAE, as referenced in ASHRAE 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such an amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2)–(3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including WSHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)

In the August 2022 NOPR, DOE proposed to reorganize the current test procedure in proposed appendix C and to adopt generally through incorporation by reference the industry standard AHRI 340/360–2022 in proposed appendix C1. 87 FR 53302, 53340. The proposed amended test procedure in the proposed appendix C1 would rely on the IEER metric. *Id.* DOE tentatively determined that the proposed amended test procedure for WSHPs in appendix C1 would be

representative of an average use cycle and would not be unduly burdensome for manufacturers to conduct. *Id.* DOE also proposed to increase the scope of applicability of the test procedure to include all WSHPs with full-load cooling capacity between 135,000 Btu/h and 760,000 Btu/h. *Id.* As part of the August 2022 NOPR, DOE presented estimates of the test costs associated with these proposals. *Id.* DOE requested comment on its understanding of the impact of the test procedure proposals in this NOPR. *Id.*

In response to the August 2022 NOPR, ClimateMaster commented that it qualifies as a small business under the Small Business Administration (''SBA'') guidelines and that the extra burden to rate through two programs, as would be required under AHRI 340/360–2022, is too costly for small businesses. (ClimateMaster, No. 22 at pp. 13–14) ClimateMaster recommended that DOE should instead use data created through the national deviation to ISO 13256–1:1998 to interpolate per the procedure given in AHRI 600. (*Id.* at p. 14)

WaterFurnace commented that that the test procedure proposed in the August 2022 NOPR referencing AHRI 340/360 (including changes to ESP requirements, flows, and entering air conditions) would approximately double its testing and certification management labor and costs. (WaterFurnace, No. 20 at p.10)

In this final rule DOE is relocating the current DOE test procedure for WSHPs to appendix C without change. The test procedure adopted in appendix C for measuring EER and COP will result in no change in testing practices or burden.

As discussed in section III.D of this final rule, DOE is incorporating by referencing AHRI 600–2023 into appendix C1 for measuring the IEER and ACOP metrics. DOE has determined that the amended test procedure is reasonably designed to produce results that are representative of the energy efficiency of that covered equipment during an average use cycle and is not unduly burdensome to conduct. The use of appendix C1 will not be required until the compliance date of any amended standards denominated in terms of IEER and ACOP, should DOE adopt such standards. DOE has concluded that the incorporation by reference AHRI 600–2023, the latest industry consensus test procedure for WSHPs, renders moot any expressed concerns related to the costs with rating to AHRI 340/360.

In this final rule, DOE estimates that the cost for units less than 135,000 Btu/h for third-party laboratory testing according to appendix C1 for measuring IEER and ACOP to be $3,700 for single speed units, $5,950 for two stage units, and $8,200 for variable speed units. The difference in test cost is attributable to the varying number of tests (*i.e.* 3, 6, or 9) required to determine IEER for units with different compressor types. Additionally, DOE is increasing the scope of applicability of the test procedure to include all WSHPs with full-load cooling capacity between 135,000 Btu/h and 760,000 Btu/h. DOE estimates the cost for third-party lab testing of large and very large WSHPs according to the test procedure adopted in appendix C1 for measuring IEER and ACOP to be $10,100 for single speed units, $15,500 for two stage units, and $20,900 for variable speed units. DOE estimates a substantially higher cost for larger WSHPs because they are generally more difficult to set up due to size and larger units typically would need to be set up in larger test chambers with more limited availability.

As discussed in the August 2022 NOPR, in accordance with 10 CFR 429.70, WSHP manufacturers may elect to use AEDMs. 87 FR 53302, 53340. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing. In the August 2022 NOPR, DOE sought specific feedback on the estimated costs to rate WSHP models with an AEDM. *Id.*

In response to the August 2022 NOPR, MIAQ agreed that AEDMs must be acceptable but stated that the need for AEDMs to be representative requires a lot of testing by manufacturers. (MIAQ, No. 23 at p. 9) MIAQ commented that DOE's proposal to include WSHP's with cooling capacities up to 760,000 Btu/h in scope increases the time and cost associated with the testing required to validate the AEDM. (*Id.*) MIAQ recommended that if an AEDM-rated unit were to fail a validation test, that only the failed unit should be derated rather than the entire AEDM-rated series. (*Id.*) MIAQ stated that the cost to test a full 30-ton WSHP qualification is around $50,000-$60,000 per basic model group, and that developing an AEDM model with sufficient trust would require as much as $1 million in capital investment. (*Id.*)

DOE estimates the per-manufacturer cost to develop and validate an AEDM to be used for all WSHP equipment with a cooling capacity less than 135,000 Btu/h would be $12,050 for single stage units, $14,300 for two stage units, and $16,550 for variable speed units. DOE estimates the per-manufacturer cost to develop and validate an AEDM to be used for all WSHPs with a cooling capacity between 135,000 Btu/h and 760,000 Btu/h would be $26,000 for single stage units, $31,400 for two stage units, and $36,800 for variable speed units. DOE estimates an additional cost of approximately $41 per basic model for determining energy efficiency using the validated AEDM.[19]

DOE disagrees with MIAQ's claims on the burden of AEDM development for WSHPs with a cooling capacity greater than 135,000 Btu/h. As discussed, based on quotes from third-party test laboratories, DOE estimates a per-unit test cost to the amended test procedure adopted in appendix C1 of $10,000–$21,000 for WSHPs with a cooling capacity greater than 135,000 Btu/h. Per 10 CFR 429.70(c)(2), validation of an AEDM requires testing a minimum of only two basic models. Based on DOE's observation of the prevalence of use of AEDMs for WSHP and similar equipment for which energy conservation standards currently apply (*i.e.,* for equipment with a cooling capacity no greater than 135,000 Btu/h), DOE expects most WSHP manufacturers already have AEDMs for simulating WSHP performance. Further, as discussed in section III.A.1 of this final rule, the manufacturer literature for all identified model lines of WSHPs with a cooling capacity greater than 135,000 Btu/h includes efficiency representations that are explicitly based on ISO 13256–1:1998, indicating that all manufacturers of this equipment already have the capability to generate efficiency representations for this equipment consistent with an industry consensus test procedure for WSHPs.

Regarding the outcomes of failed DOE verification testing, in this final rule, DOE is not amending its regulations for AEDM verification, which are applicable to all equipment categories that may use AEDMs. DOE notes that 10 CFR 429.70(c)(5)(viii) outlines required manufacturer actions with regard to AEDM use if basic models certified with AEDMs are determined to have invalid

[19] DOE estimated initial costs to validate an AEDM assuming 80 hours of general time to develop an AEDM based on existing simulation tools and 16 hours to validate two basic models within that AEDM at the cost of an engineering technician wage of $41 per hour plus the cost of third-party physical testing of two units per validation class (as required in 10 CFR 429.70(c)(2)(iv)). DOE estimated the additional per basic model cost to determine efficiency using an AEDM assuming 1 hour per basic model at the cost of an engineering technician wage of $41 per hour.

ratings. Given that most WSHP manufacturers are AHRI members and that DOE is incorporating by reference the prevailing industry test procedure that was established for use in AHRI's certification program, DOE expects that manufacturers will already be testing using AHRI 600–2023 in the timeframe of any potential future energy conservation standards in terms of IEER and ACOP. Based on this, DOE has determined that the test procedure amendments adopted in this final rule are not expected to increase the testing burden on WSHP manufacturers that are AHRI members. For the minority of WSHP manufacturers that are not members of AHRI, the test procedure amendments may have costs associated with model re-rating, to the extent that the manufacturers would not already be testing to the updated industry test procedure. Additionally, DOE has determined that the test procedure amendments will not require manufacturers to redesign any of the covered equipment, will not require changes to how the equipment is manufactured, and will not impact the utility of the equipment.

J. Effective and Compliance Dates

The effective date for the adopted test procedure amendments will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that, for the equipment at issue, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of this final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

Starting 360 days after publication of a test procedure final rule in the **Federal Register**, and prior to the compliance date of amended standards for WSHPs that rely on IEER and ACOP, representations must be based on the test procedure in appendix C. WSHPs are not required to be tested according to the test procedure in appendix C1 (resulting in the IEER and ACOP metrics) until the compliance date of amended energy conservation standards denominated in terms of the IEER and ACOP metrics, should DOE adopt such standards.

Any voluntary representations of IEER and ACOP made prior to the compliance date of amended standards for WSHPs that rely on IEER and ACOP must be based on the test procedure in appendix C1 starting 360 days after publication of such a test procedure final rule in the **Federal Register**, and manufacturers may use appendix C1 to certify compliance with any amended standards based on IEER and ACOP, if adopted, prior to the applicable compliance date for those energy conservation standards.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule to amend the test procedure for WSHPs under the provisions of the RFA and the policies and procedures published on February 19, 2003.

As part of the August 2022 NOPR, DOE conducted its initial regulatory flexibility analysis (''IRFA''). The following sections outline DOE's determination that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted.

DOE is amending the test procedure for WSHPs to satisfy its statutory obligations under EPCA. (42 U.S.C. 6314(a)(1)(A))

In this final rule, DOE is establishing new appendices C and C1 to subpart F of part 431. The current DOE test procedure for WSHPs is relocated to appendix C without change. The amended test procedure for WSHPs is established in a new appendix C1, which includes the following amended test procedure requirements for WSHPs for measuring the updated efficiency metrics: (1) IEER for WSHPs using the methods from AHRI 600–2023; and (2) ACOP using the methods specified in AHRI 600–2023. Use of the amended test procedure in appendix C1 will not be required until such time as compliance is required with amended energy conservation standards for WSHPs denominated in terms of IEER

and ACOP, should DOE adopt such standards.

Additionally, DOE is expanding the scope of the test procedure to include WSHPs with capacities between 135,000 and 760,000 Btu/h, as well as specifying the components that must be present for testing and amending certain provisions related to representations and enforcement in 10 CFR part 429.

DOE uses the Small Business Administration (''SBA'') small business size standards to determine whether manufacturers qualify as ''small businesses,'' which are listed by the North American Industry Classification System (''NAICS'').[20] The SBA considers a business entity to be small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. WSHP manufacturers, who produce the equipment covered by this rule, are classified under NAICS code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

DOE utilized the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS'') [21] and the DOE's Certification Compliance Database (''CCD'') [22] in identifying manufacturers. DOE screened out private labelers because original equipment manufacturers (''OEMs'') would likely be responsible for any costs associated with testing to the amended test procedure. As a result of this inquiry, DOE identified a total of 25 OEMs of WSHPs in the United States affected by this rulemaking. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign owned without substantive domestic operations. DOE used subscription-based business information tools to determine headcount and revenue of each business. Of the 25 OEMs of WSHPs, DOE identified 6 as small, domestic manufacturers.

Of the 6 small, domestic manufacturers identified, all certify their WSHP models in the AHRI Certification Directory for WSHPs.

AHRI has published a new industry test standard for WSHPs, titled AHRI Standard 600, ''2023 Standard for Performance Rating of Water/Brine to Air Heat Pump Equipment'' (''AHRI 600–2023''). DOE presumes AHRI's certification program will require rating based on AHRI 600–2023 to develop the IEER and ACOP metrics. As a result, the test procedure amendments adopted in this final rule will not add any additional testing burden to manufacturers that already certify WSHPs to AHRI's certification program. Accordingly, DOE does not expect that the identified small business manufacturers, all of whom participate in AHRI's certification program, would see increased testing costs as a result of this rulemaking.

Additionally, DOE notes these test procedure amendments will only affect voluntary representations. There is no existing energy conservation standard that requires manufacturer to certify to WSHP efficiency in terms of IEER and ACOP to DOE. Certification based on IEER and ACOP would only be required if and when DOE establishes energy conservation standards based on those metrics for WSHPs.

Therefore, for the reasons stated in the preceding paragraphs, DOE concludes and certifies that the cost effects accruing from this test procedure final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of WSHPs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including WSHPs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for WSHPs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for WSHPs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for WSHPs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure

[20] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support—table-size-standards* (Last accessed on July 16, 2021).

[21] MAEDbS is available at *www.cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (Last accessed Dec. 1, 2021).

[22] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/* (Last accessed May 1, 2023).

meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for WSHPs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHRI 600–2023, ANSI/ASHRAE 37–2009, ISO 13256–1:1998, and Melinder 2010. DOE has evaluated these standards and is unable to conclude whether the standards fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following test standards and reference document:

AHRI 600–2023 is an industry accepted test procedure for measuring the performance of water source heat pumps. AHRI 600–2023 is available on AHRI's website at: *https://www.ahrinet.org/search-standards/ahri-600-i-p-performance-rating-waterbrine-air-heat-pump-equipment.*

ANSI/ASHRAE 37–2009 is an industry-accepted test procedure for measuring the performance of electrically driven unitary air-conditioning and heat pump equipment. ANSI/ASHRAE 37–2009 is available on ANSI's website at: *webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

Errata sheet for ANSI/ASHRAE Standard 37–2009 dated March 27, 2019, specifies all of the corrections to ANSI/ASHRAE 37–2009 identified from the date of publication through March 27, 2019. Errata sheet for ANSI/ASHRAE Standard 37–2009 is available on ASHRAE's website at: *https://www.ashrae.org/technical-resources/standards-and-guidelines/standards-errata.*

Melinder 2010 is a reference booklet with properties of secondary working fluids for indirect heating and cooling systems used in air conditioning, heat pumps, and other applications. Melinder 2010 is available from the International Institute of Refrigeration website at: *www.iifiir.org.*

ISO 13256–1:1998 is an industry-accepted test procedure for measuring the performance of specific water-source heat pump equipment. ISO 13256–1:1998 is available on ISO's website at: *www.iso.org/store.html.*

The following standards are currently approved for the sections in which they appear in this final rule: AHRI 210/240–2008 and AHRI 340/360–2007.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on November 17, 2023, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 20, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:
■ a. Redesignating paragraphs (c)(4) through (6) as paragraphs (c)(5) through (7); and
■ b. Adding new paragraph (c)(4).

The addition reads as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(c) * * *

(4) AHRI Standard 600–2023 (I–P) (''AHRI 600–2023''), *2023 Standard for Performance Rating of Water/Brine to Air Heat Pump Equipment,* approved September 11, 2023; IBR approved for § 429.43.

* * * * *

■ 3. Amend § 429.43 by adding paragraph (a)(3)(v) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) * * *

(v) Water-Source Heat Pumps. When certifying to standards in terms of IEER and ACOP, the following provisions apply.

(A) Individual model selection:

(1) Representations for a basic model must be based on the least efficient individual model(s) distributed in commerce among all otherwise comparable model groups comprising

the basic model, except as provided in paragraph (a)(3)(v)(A)(*2*) of this section for individual models that include components listed in table 6 to paragraph (a)(3)(v)(A) of this section. For the purpose of this paragraph (a)(3)(v)(A)(*1*), ''otherwise comparable model group'' means a group of individual models distributed in commerce within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure specified at 10 CFR 431.96 other than those listed in table 6 to paragraph (a)(3)(v)(A) of this section. An otherwise comparable model group may include individual models distributed in commerce with any combination of the components listed in table 6 (or none of the components listed in table 6) to paragraph (a)(3)(v)(A) of this section. An otherwise comparable model group may consist of only one individual model.

(2) For a basic model that includes individual models distributed in commerce with components listed in table 6 to paragraph (a)(3)(v)(A) of this section, the requirements for determining representations apply only to the individual model(s) of a specific otherwise comparable model group distributed in commerce with the least number (which could be zero) of components listed in table 6 to paragraph (a)(3)(v)(A) of this section included in individual models of the group. Testing under this paragraph shall be consistent with any component-specific test provisions specified in section 3 of appendix C1 to subpart F of 10 CFR part 431.

TABLE 6 TO PARAGRAPH (a)(3)(v)(A)—SPECIFIC COMPONENTS FOR WATER SOURCE HEAT PUMPS

Component	Description
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.
Condenser Pumps/Valves/Fittings	Additional components in the water circuit for water control or filtering.
Condenser Water Reheat	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using water from the condenser coil in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.
Desiccant Dehumidification Components.	An assembly that reduces the moisture content of the supply air through moisture transfer with solid or liquid desiccants.
Desuperheater	A heat exchanger located downstream of the compressor on the high-pressure vapor line that moves heat to an external source, such as potable water.
Fire/Smoke/Isolation Dampers	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.
Grill Options	Special grills used to direct airflow in unique applications (such as up and away from a rear wall).
Indirect/Direct Evaporative Cooling of Ventilation Air.	Water is used indirectly or directly to cool ventilation air. In a direct system the water is introduced directly into the ventilation air and in an indirect system the water is evaporated in secondary air stream and the heat is removed through a heat exchanger.
Non-Standard High-Static Indoor Fan Motors.	The standard indoor fan motor is the motor specified in the manufacturer's installation instructions for testing and shall be distributed in commerce as part of a particular model. A non-standard high-static motor is an indoor fan motor that is not the standard indoor fan motor and that is distributed in commerce as part of an individual model within the same basic model. For a non-standard high-static indoor fan motor(s) to be considered a specific component for a basic model (and thus subject to the provisions of paragraph (a)(3)(v)(A)(*2*) of this section), the following 2 provisions must be met: 1. Non-standard high-static indoor fan motor(s) must meet the minimum allowable efficiency determined per section D.4.1 of AHRI 600–2023 (incorporated by reference, see § 429.4) for non-standard high-static indoor fan motors, or per section D.4.2 of AHRI 600–2023 for non-standard high-static indoor integrated fan and motor combinations. 2. If the standard indoor fan motor can vary fan speed through control system adjustment of motor speed, all non-standard high-static indoor fan motors must also allow speed control (including with the use of a variable-frequency drive).
Powered Exhaust/Powered Return Air Fans.	A powered exhaust fan is a fan that transfers directly to the outside a portion of the building air that is returning to the unit, rather than allowing it to recirculate to the indoor coil and back to the building. A powered return fan is a fan that draws building air into the equipment.
Process Heat Recovery/Reclaim Coils/Thermal Storage.	A heat exchanger located inside the unit that conditions the equipment's supply air using energy transferred from an external source using a vapor, gas, or liquid.
Refrigerant Reheat Coils	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using high-pressure refrigerant in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.
Sound Traps/Sound Attenuators	An assembly of structures through which the supply air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.
Steam/Hydronic Heat Coils	Coils used to provide supplemental heating.
Ventilation Energy Recovery System (VERS).	An assembly that preconditions outdoor air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.
Waterside Economizer	A heat exchanger located upstream of the indoor coil that conditions the supply air when system water loop conditions are favorable so as not to utilize compressor operation.

(B) The represented value of cooling capacity must be between 95 percent and 100 percent of the mean of the cooling capacities measured for the units in the sample selected as described in paragraph (a)(1)(ii) of this section, or between 95 percent and 100 percent of the cooling capacity output simulated by the AEDM as described in paragraph (a)(2) of this section.

* * * * *

■ 4. Amend § 429.134 by adding paragraph (dd) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(dd) *Water-Source Heat Pumps.* The following provisions apply for assessment and enforcement testing of models subject to standards in terms of IEER and ACOP.

(1) *Verification of Cooling Capacity.* The cooling capacity of each tested unit of the basic model will be measured pursuant to the test requirements of appendix C1 to subpart F of 10 CFR part 431. The mean of the measurements will be used to determine the applicable standards for purposes of compliance.

(2) *Specific Components.* If a basic model includes individual models with components listed at table 6 to § 429.43(a)(3)(v)(A) and DOE is not able to obtain an individual model with the least number (which could be zero) of those components within an otherwise comparable model group (as defined in § 429.43(a)(3)(v)(A)(*1*)), DOE may test any individual model within the otherwise comparable model group.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Amend § 431.92 by:

■ a. Adding in alphabetical order a definition of ''Applied Coefficient of performance, or ACOP''; and

■ b. Revising the definitions of ''Integrated energy efficiency ratio, or IEER,'' and ''Water-source heat pump''.

The addition and revisions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Applied Coefficient of performance, or *ACOP* means the ratio of the heating capacity to the power input, including system pump power, for water-source heat pumps. ACOP is expressed in watts per watt and determined according to appendix C1 of this subpart.

* * * * *

Integrated energy efficiency ratio, or *IEER,* means a weighted average calculation of mechanical cooling EERs determined for four load levels and corresponding rating conditions, expressed in Btu/watt-hour. IEER is measured:

(1) Per appendix A to this subpart for air-cooled small (≥65,000 Btu/h), large, and very large commercial package air conditioning and heating equipment;

(2) Per appendix C1 to this subpart for water-source heat pumps;

(3) Per appendix D1 to this subpart for variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h); and

(4) Per appendix G1 to this subpart for single package vertical air conditioners and single package vertical heat pumps.

* * * * *

Water-source heat pump means commercial package air-conditioning and heating equipment that is a single-phase or three-phase reverse-cycle heat pump that uses a circulating water loop as the heat source for heating and as the heat sink for cooling. The main components are a compressor, refrigerant-to-water heat exchanger, refrigerant-to-air heat exchanger, refrigerant expansion devices, refrigerant reversing valve, and indoor fan (except that coil-only units do not include an indoor fan). Such equipment includes, but is not limited to, water-to-air water-loop heat pumps.

■ 7. Amend § 431.95 by:

■ a. Redesignating paragraphs (b)(6) through (10) as paragraphs (b)(7) through (11);

■ b. Adding new paragraph (b)(6);

■ c. In paragraph (c)(2), removing the text ''B, D1'' and adding, in its place, the text ''B, C1, D1'';

■ d. In paragraph (c)(3), removing the text ''appendix D1'' and adding, in its place, the text ''appendices C1 and D1'';

■ e. Revising paragraph (d); and

■ f. Adding paragraph (e).

The additions and revision read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(6) AHRI Standard 600–2023 (I–P) (''AHRI 600–2023''), *2023 Standard for Performance Rating of Water/Brine to Air Heat Pump Equipment,* AHRI-approved September 11, 2023; IBR approved for appendix C1 to this subpart.

* * * * *

(d) *IIR.* International Institute of Refrigeration, 177 Boulevard Malesherbes 75017 Paris, France; +33 (0)1 42 27 32 35; *www.iifiir.org.*

(1) *Properties of Secondary Working Fluids for Indirect Systems,* including Section 2.3 Errata Sheet, Melinder, published 2010 (''Melinder 2010''), IBR approved for appendix C1 to this subpart.

(2) [Reserved]

(e) *ISO.* International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland; +41 22 749 01 11; *www.iso.org/store.html.*

(1) ISO Standard 13256–1 (''ISO 13256–1:1998''), ''*Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps,*'' approved 1998; IBR approved for appendix C to this subpart.

(2) [Reserved]

* * * * *

■ 8. Amend § 431.96 by revising table 1 to paragraph (b) to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	Appendix F to this subpart [3].	None.

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures in	Additional test procedure provisions as indicated in the listed paragraphs of this section
			SEER2 and HSPF2	Appendix F1 to this subpart [3].	None.
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 [1] (omit section 6.5).	Paragraphs (c) and (e).
			EER	AHRI 340/360–2007 [1] (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	Appendix C to this subpart [3].	None.
	Water-Source HP	<135,000 Btu/h	IEER and ACOP	Appendix C1 to this subpart [3].	None.
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP ..	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 [1] (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	≥135,000 Btu/h and <240,000 Btu/h.	EER and COP	Appendix C to this subpart [3].	None.
	Water-Source HP	≥135,000 Btu/h and <240,000 Btu/h.	IEER and ACOP	Appendix C1 to this subpart [3].	None.
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP ..	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 [1] (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	≥240,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix C to this subpart [3].	None.
	Water-Source HP	≥240,000 Btu/h and <760,000 Btu/h.	IEER and ACOP	Appendix C1 to this subpart [3].	None.
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<760,000 Btu/h	SCOP	Appendix E to this subpart [3].	None.
		<760,000 Btu/h or <930,000 Btu/h [4].	NSenCOP	Appendix E1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	Appendix F to this subpart [3].	None.
			SEER2	Appendix F1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	Appendix F to this subpart [3].	None.
			SEER2 and HSPF2	Appendix F1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D to this subpart [3].	None.
			IEER and COP	Appendix D1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D to this subpart [3].	None.
			IEER and COP	Appendix D1 to this subpart [3].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix G to this subpart [3].	None.

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures in	Additional test procedure provisions as indicated in the listed paragraphs of this section
			EER, IEER, and COP	Appendix G1 to this subpart [3].	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B to this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.
[3] For equipment with multiple appendices listed in this Table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.
[4] For upflow ducted and downflow floor-mounted computer room air conditioners, the test procedure in appendix E1 of this subpart applies to equipment with net sensible cooling capacity less than 930,000 Btu/h. For all other configurations of computer room air conditioners, the test procedure in appendix E1 applies to equipment with net sensible cooling capacity less than 760,000 Btu/h.

* * * * *

■ 9. Add appendix C to subpart F of part 431 to read as follows:

Appendix C to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Water-Source Heat Pumps

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standard at § 431.97 as that standard appeared in the January 1, 2023 edition of 10 CFR parts 200–499. Specifically, representations must be based on testing according to either this appendix or 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2023.

Starting on November 29, 2024, voluntary representations with respect to energy use or efficiency of water-source heat pumps with cooling capacity greater than or equal to 135,000 Btu/h and less than 760,000 Btu/h must be based on testing according to this appendix. Manufacturers may also use this appendix to make voluntary representations with respect to energy use or efficiency prior to November 29, 2024.

Starting on November 29, 2024, voluntary representations with respect to the integrated energy efficiency ratio (IEER) and applied coefficient of performance (ACOP) of water-source heat pumps must be based on testing according to appendix C1 of this subpart. Manufacturers may also use appendix C1 to make voluntary representations with respect to IEER and ACOP prior to November 29, 2024.

Starting on the compliance date for any amended energy conservation standards for water-source heat pumps based on IEER and ACOP, any representations, including compliance certifications, made with respect to the energy use or energy efficiency of water-source heat pumps must be based on testing according to appendix C1 of this subpart.

Manufacturers may also certify compliance with any amended energy conservation standards for water-source heat pumps based on IEER and ACOP prior to the applicable compliance date for those standards, and those compliance certifications must be based on testing according to appendix C1 of this subpart.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for ISO 13256–1:1998. To the extent there is a conflict between the terms or provisions of a referenced industry standard and this appendix, the appendix provisions control.

2. General

Determine the energy efficiency ratio (EER) and coefficient of performance (COP) in accordance with ISO 13256–1:1998.

Section 3 of this appendix provides additional instructions for determining EER and COP.

3. Additional Provisions for Equipment Set-Up

The only additional specifications that may be used in setting up the basic model for testing are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Sections 3.1 through 3.2 of this appendix provide specifications for addressing key information typically found in the installation and operation manuals.

3.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value must be used.

3.2. The airflow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton must be used.

■ 10. Add appendix C1 to subpart F of part 431 to read as follows:

Appendix C1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Water-Source Heat Pumps

Note: Prior to the compliance date of amended standards for water-source heat pumps that rely on integrated energy efficiency ratio (IEER) and applied coefficient of performance (ACOP) published after January 1, 2023, representations with respect to the energy use or energy efficiency of water-source heat pumps, including compliance certifications, must be based on testing according to appendix C of this subpart.

Starting on November 29, 2024, voluntary representations with respect to the IEER and ACOP of water-source heat pumps must be based on testing according to this appendix. Manufacturers may also use this appendix to make voluntary representations with respect to IEER and ACOP prior to November 29, 2024.

Starting on the compliance date for any amended energy conservation standards for water-source heat pumps based on IEER and ACOP, any representations, including compliance certifications, made with respect to the energy use or energy efficiency of water-source heat pumps must be based on testing according to this appendix.

Manufacturers may also certify compliance with any amended energy conservation standards for water-source heat pumps based on IEER and ACOP prior to the applicable compliance date for those standards, and

those compliance certifications must be based on testing according to this appendix.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95 the entire standards for AHRI 600–2023, ANSI/ASHRAE 37–2009 (as corrected by the Errata sheet for ANSI/ASHRAE 37–2009), and Melinder 2010. However, certain enumerated provisions of AHRI 600–2023 and ASHRAE 37–2009, as listed in this section 1, are inapplicable.

To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1. AHRI 600–2023

(a) Section 1 Purpose is inapplicable,
(b) Section 2 Scope is inapplicable,
(c) The following subsections of section 3 Definitions are inapplicable:
(1) 3.2.1 (Air Economizer),
(2) 3.2.3 (Barometric Relief Dampers),
(3) 3.2.4 (Basic Model),
(4) 3.2.5 (Coated Coils),
(5) 3.2.6 (Coefficients of Performance),
(6) 3.2.9 (Condenser Pump/Valves/Fittings),
(7) 3.2.10 (Condenser Water Reheat),
(8) 3.2.13 (Desiccant Dehumidification Components),
(9) 3.2.14 (Desuperheater),
(10) 3.2.15.1 (Energy Efficiency Ratio),
(11) 3.2.16 (Evaporative Cooling of Ventilation Air),
(12) 3.2.17 (Fire/Smoke/Isolation Dampers),
(13) 3.2.19 (Fresh Air Dampers),
(14) 3.2.21 (Grill Options),
(15) 3.2.23 (High-effectiveness Indoor Air Filtration),
(16) 3.2.24 (Hot Gas Bypass),
(17) 3.2.27 (Integrated Energy Efficiency Ratio),
(18) 3.2.28 (Low-static Heat Pump),
(19) 3.2.35 (Power Correction Capacitors),
(20) 3.2.36 (Powered Exhaust Air Fan),
(21) 3.2.37 (Powered Return Air Fan),
(22) 3.2.38 (Process Heat Recovery/Reclaim Coils/Thermal Storage),
(23) 3.2.40 (Published Rating),
(24) 3.2.42 (Refrigerant Reheat Coils),
(25) 3.2.43 (Single Package Heat Pumps),
(26) 3.2.44 (Sound Traps/Sound Attenuators),
(27) 3.2.45 (Split System Heat Pump),
(28) 3.2.51 (Steam/Hydronic Heat Coils),
(29) 3.2.53 (UV Lights),
(30) 3.2.54 (Ventilation Energy Recovery System),
(31) 3.2.55 (Water/Brine to Air Heat Pump Equipment), and
(32) 3.2.56 (Waterside Economizer),
(d) The following subsections of section 6 Rating Requirements are inapplicable:
(1) 6.5 (Residential Cooling Capacity and Efficiency),
(2) 6.6 (Residential Heating Capacity and Efficiency),
(3) 6.7 (Test Data vs Computer Simulation),
(4) 6.8 (Rounding and Precision),
(5) 6.9 (Uncertainty), and
(6) 6.10 (Verification Testing),
(e) Section 7 Minimum Data Requirements for Published Ratings is inapplicable
(f) Section 8 Operating Requirements is inapplicable,
(g) Section 9 Marking and Nameplate Data is inapplicable,
(h) Section 10 Conformance Conditions is inapplicable,
(i) Appendix B References—Informative is inapplicable,
(j) Sections D.1 (Purpose), D.2 (Configuration Requirements), and D.3 (Optional System Features) of Appendix D Unit Configuration For Standard Efficiency Determination—Normative are inapplicable, and
(k) Appendix F Example of Determination of Fan and Motor Efficiency for Non-standard Integrated Indoor Fan and Motors—Informative is inapplicable.

1.2. ANSI/ASHRAE 37–2009 (Even if Corrected by the Errata Sheet)

(a) Section 1 Purpose is inapplicable.
(b) Section 2 Scope is inapplicable.
(c) Section 4 Classification is inapplicable.

2. General

Determine integrated energy efficiency ratio (IEER) and heating applied coefficient of performance (ACOP) in accordance with this appendix and the applicable sections of AHRI 600–2023, ANSI/ASHRAE 37–2009, and Melinder 2010. Representations of AEER, EER, and COP may optionally be made.

Section 3 of this appendix provides additional instructions for testing. In cases where there is a conflict, the language of this appendix takes highest precedence, followed by AHRI 600–2023, followed by ANSI/ASHRAE 37–2009. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notification of any change in the incorporation must be published in the **Federal Register**.

3. Setup and Test Provisions for Specific Components

When testing a water-source heat pump that includes any of the features listed in table 1 to this appendix, test in accordance with the setup and test provisions specified in table 1 to this appendix.

TABLE 1 TO APPENDIX C1—SETUP AND TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Setup and test provisions
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.	For any air economizer that is factory-installed, place the economizer in the 100 percent return position and close and seal the outside air dampers for testing. For any modular air economizer shipped with the unit but not factory-installed, do not install the economizer for testing.
Barometric Relief Dampers	An assembly with dampers and means to automatically set the damper position in a closed position and one or more open positions to allow venting directly to the outside a portion of the building air that is returning to the unit, rather than allowing it to recirculate to the indoor coil and back to the building.	For any barometric relief dampers that are factory-installed, close and seal the dampers for testing. For any modular barometric relief dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Desiccant Dehumidification Components.	An assembly that reduces the moisture content of the supply air through moisture transfer with solid or liquid desiccants.	Disable desiccant dehumidification components for testing.

TABLE 1 TO APPENDIX C1—SETUP AND TEST PROVISIONS FOR SPECIFIC COMPONENTS—Continued

Component	Description	Setup and test provisions
Fire/Smoke/Isolation Dampers.	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.	For any fire/smoke/isolation dampers that are factory-installed, set the dampers in the fully open position for testing. For any modular fire/smoke/isolation dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Fresh Air Dampers	An assembly with dampers and means to set the damper position in a closed and one open position to allow air to be drawn into the equipment when the indoor fan is operating.	For any fresh air dampers that are factory-installed, close and seal the dampers for testing. For any modular fresh air dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Power Correction Capacitors	A capacitor that increases the power factor measured at the line connection to the equipment.	Remove power correction capacitors for testing.
Process Heat recovery/Reclaim Coils/Thermal Storage.	A heat exchanger located inside the unit that conditions the equipment's supply air using energy transferred from an external source using a vapor, gas, or liquid.	Disconnect the heat exchanger from its heat source for testing.
Refrigerant Reheat Coils	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using high-pressure refrigerant in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.	De-activate refrigerant reheat coils for testing so as to provide the minimum (none if possible) reheat achievable by the system controls.
Steam/Hydronic Heat Coils ..	Coils used to provide supplemental heating	Test with steam/hydronic heat coils in place but providing no heat.
UV Lights	A lighting fixture and lamp mounted so that it shines light on the indoor coil, that emits ultraviolet light to inhibit growth of organisms on the indoor coil surfaces, the condensate drip pan, and/other locations within the equipment.	Turn off UV lights for testing.
Ventilation Energy Recovery System (VERS).	An assembly that preconditions outdoor air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.	For any VERS that is factory-installed, place the VERS in the 100 percent return position and close and seal the outside air dampers and exhaust air dampers for testing, and do not energize any VERS subcomponents (*e.g.,* energy recovery wheel motors). For any VERS module shipped with the unit but not factory-installed, do not install the VERS for testing.

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